रजिस्ट्री सं० डी० एल० (एन) 04/0007/2003—05

REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 49] नई दिल्ली, दिसम्बर 3—दिसम्बर 9, 2006, शनिवार/अग्रहायण 12—अग्रहायण 18, 1928

No. 49] NEW DELHI, DECEMBER 3—DECEMBER 9, 2006, SATURDAY/AGRAHAYANA 12—AGRAHAYANA 18, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(कार्यालय : आयुक्त, केन्द्रीय उत्पाद शुल्क)

जयपुर, 18 नवम्बर, 2006

सं. 03-सीमा शुल्क (एन टी) 2006

(सीमा शुल्क)

का.आ. 4682.—सीमा शुल्क अधिनियम, 1962 की धारा 152 के खण्ड (ए) के तहत भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली की अधिसूचना संख्या 33/94 सीमा शुल्क (एन टी) दिनांक प्रथम जुलाई, 1994 के अन्तर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैं, जयन्त मिश्र, आयुक्त, केन्द्रीय उत्पाद शुल्क, जयपुर-प्रथम एतद्द्वारा शतप्रतिशत ई.ओ.यू. स्थापित करने के उद्देश्य से सीमा शुल्क अधिनियम की धारा 9 के अन्तर्गत राजस्थान राज्य के जयपुर जिले के विश्वकर्मा औद्योगिक क्षेत्र विस्तार में स्थित आकेडा डूंगर औद्योगिक क्षेत्र को भण्डारण स्टेशन (वेयर हाउसिंग स्टेशन) घोषित करता हूँ।

[फा. सं. पंचम(16)ईओयू/18/2006]

जयन्त मिश्र, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

(OFFICE OF THE COMMISSIONER, CENTRAL EXCISE)

Jaipur, the 18th November, 2006

No. 03-Cus(NT) 2006

(CUSTOMS)

S. O. 4682.—In exercise of the powers conferred by Notification No. 33/94-Customs (NT), dated the 1st July, 1994, by the Government of India, Ministry of Finance, Department of Revenue, New Delhi, issued under clause (a) of Section 152 of Customs Act, 1962. I, Jayant Misra, Commissioner of Central Excise, Jaipur-I, hereby declare Akera Dungar Industrial Area, VKI Extension, District Jaipur, in the state of Rajasthan to be warehousing station under Section 9 of the Customs Act, 1962 for the purpose of setting up 100% E.O.U.

[F. No. V(16)EOU/18/2006]

JAYANT MISRA, Commissioner

(मुख्य आयकर आयुक्त का कार्यालय)

जयपुर, 31 अक्तूबर, 2006

सं. 01/2006-07

का.आ. 4683.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर, एतद्द्वारा निर्धारण वर्ष 2003-04 से 2005-06 (वि.व. 2002-03 से 2004-05) के लिए कथित धारा के उद्देश्य से "द एजुकेशन कमेटी ऑफ माहेश्वरी समाज जयपुर" को स्वीकृति देते हैं।

बशर्ते कि समिति आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उप-खण्ड (23 सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्र. मुआआ/अआआ/(समन्वय)/जय/10(23सी)(vi)/06-07]
एम. एन. वर्मा, मुख्य आयकर आयुक्त

(OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX)

Jaipur, the 31st October, 2006

No. 01/2006-07

S. O. 4683.—In exercise of the powers conferred by Sub-section (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with Rule 2CA of the Income-tax Rules, 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "The Education Committee of Maheshwari Samaj, Jaipur" for the purpose of the said Section for the Assessment Years 2003-04 to 2005-06. (F. Y. 2002-03 to 2004-05).

Provided that the society conforms to and complies with the provisions of Sub-clause (vi) of clause (23C) of Section 10 of the Income tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CC/Addl. CIT(Coord.)/JPR/10 (23C) (vi)/06-07]

M. N. VERMA, Chief Commissioner of Income-tax

जयपुर, 31 अक्तूबर, 2006

सं. 02/2006-07

का.आ. 4684.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उप-धारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर, एतद्द्वारा निर्धारण वर्ष 2002-03 से 2004-05 (वि.व. 2001-02 से 2003-04) के लिए कथित धारा के उद्देश्य से "मै. स्टेप बाई स्टेप शिक्षा समिति, जयपुर" को स्वीकृति देते हैं।

बशर्ते कि समिति आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उप-खण्ड (23 सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करें।

[क्र. मुआआ/अआआ/(समन्वय)/जय/10(23सी)(vi)/06-07]
एम. एन. वर्मा, मुख्य आयकर आयुक्त

Jaipur, the 31st October, 2006

No. 02/2006-07

S. O. 4684.—In exercise of the powers conferred by sub-section (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with Rule 2CA of the Income-tax rules, 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "M/s. Step by Step Shiksha Samiti, Jaipur" for the purpose of the said Section for the Assessment Years 2002-03 to 2004-05. (F. Y. 2001-02 to 2003-04).

Provided that the society conforms to and complies with the provisions of Sub-clause (vi) of clause (23C) of Section 10 of the Income tax Act, 1961 read with rule 2CA of the income-tax Rules, 1962.

[No.CC/Addl. CIT(Coord.)/JPR/10 (23C) (vi)/06-07]

M. N. VERMA, Chief Commissioner of Income-tax

जयपुर, 31 अक्तूबर, 2006

सं. 03/2006-07

का.आ. 4685.—आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर, एतद्द्वारा निधरिण वर्ष 2005-06 से 2007-08 (वि.व. 2004-05 से 2006-07) के लिए कथित धारा के उद्देश्य से "मै. स्टेप बाई स्टेप शिक्षा समिति, जयपुर" को स्वीकृति देते हैं।

बशर्ते कि समिति आयकर नियम 1962 के नियम, 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्र. मुआआ/अआआ/(समन्वय)/जय/10(23सी)(vi)/06-07]
एम. एन. वर्मा, मुख्य आयकर आयुक्त

Jaipur, the 31st October, 2006

No. 03/2006-07

S.O. 4685.—In exercise of the powers conferred by sub-section (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with Rule 2CA of the Income-tax rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves "M/s. Step by Step Shiksha Samiti, Jaipur" for the purpose of the said Section for the Assessment Years 2005-06 to 2007-08. (F. Y. 2004-05 to 2006-07.

Provided that the society conforms to and complies with the provisions of Sub-clause (vi) of clause (23C) of

Section 10 of the Income-tax Act, 1961 read with rule 2CA of the income-tax Rules, 1962.

[No.CC/Addl. CIT(Coord.)/JPR/10(23C)(vi)/06-07]

M. N. VERMA, Chief Commissioner of Income-tax

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 13 नवम्बर, 2006

(आयकर)

का.आ. 4686.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट, म. सं. 3-6-11-115/ए, जनप्रिय हाऊस गली नं. 18, सेंट मेरी जूनियर कॉलेज के सामने, हिमायतनगर, हैदराबाद-500029 फॉर्च्यून 9, सर्वे सं. 2,3,13 सोमाजीगुड़ा अमीरेपैट, हैदराबाद शहरी, जिला हैदराबाद, आन्ध्र प्रदेश-500034 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-9-2006 के पत्र सं. 15/157/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब, उक्त अधिनियम की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट

(ii) प्रस्तावित स्थान : फॉर्च्यून 9 सर्वे सं. 2,3,13, सोमाजीगुड़ा, अमीरेपैट, हैदराबाद शहरी, जिला हैदराबाद, आन्ध्र प्रदेश- 500034

(iii) औद्योगिक पार्क का क्षेत्रफल : 18,786.95 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहित				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	7	75	–	–	संचार सेवाएं
ख	8	89	892	–	डाटा प्रोसेसिंग साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
ग	8	89	893	–	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
घ	8	89	894	–	वास्तुशिल्पीय तथा इंजीनियरी एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप
ङ	8	89	895	–	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 90.41%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 09.59%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 3 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 22 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 15 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 22 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : सितम्बर 2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में अल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों, जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट, हैदराबाद उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट, हैदराबाद ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तात्पर्यक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट, हैदराबाद (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है मैसर्स जनप्रिय इंजीनियर्स सिंडिकेट, हैदराबाद औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्‌घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 315/2006/फा.सं. 178/120/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 13th November, 2006

(INCOME-TAX)

S.O. 4686.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E). dated the 30th March, 1999 for the period beginning on the 1st day of April. 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002 for the period beginning on the 1st day of April. 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Janapriya Engineers Syndicate, H. No. 3-6-11-1151 A, Janapriya House, St. No. 18, Opposite St. Mary's Junior College, Himayatnagar, Hyderabad-500 029 is developing an Industrial Park at Fortune 9, Survey No. 2,3,13, Somajiguda, Ameerpet, Hyderabad Urban, District Hyderabad, Andhra Pradesh-500 034;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/157/2005-IP&ID dated 25-9-2006 subject to the terms and conditions mentioned in the annexure, to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Janapriya Engineers Syndicate, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Janapriya Engineers Syndicate :

1. (i) Name of the Industrial Undertaking : Janapriya Engineers Syndicate

(ii) Proposed location : Fortune 9, Survey Nos. 2, 3,13, Samajiguda, Ameerpet, Hyderabad Urban, District-Hyderabad, Andhra Pradesh-500 034.

(iii) Area of Industrial Park : 18,786.95 Square Metres

(iv) Proposed activities

Nature of Industrial activity with NIC code

S.No.	NIC Code				Description
	Section	Division	Group	Class	
A	7	75	-	-	Communication Services
B	8	89	892	-	Data processing. software development and computer consultancy services
C	8	89	893	-	Business and management consultancy activities
D	8	89	894	-	Architectural and engineering and other technical consultancy activities.
E	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.41 %

(vi) Percentage of allocable area earmarked for commercial use : 09.59 %

(vii) Minimum number of industrial units : 03 Units

(viii) Total investments proposed: (Amount in Rupees) : 22 crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 15 crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 22 crores

(xi) Proposed date of commencement of the Industrial Park : September, 2005

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty percent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Janapriya Engineers Syndicate, Hyderabad, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income tax Act, 1961.

9. The approval will be invalid and M/s. Janapriya Engineers Syndicate, Hyderabad shall be solely responsible for any repercussions of such invalidity, if :

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Janapriya Engineers Syndicate, Hyderabad, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transfercor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Janapriya Engineers Synaicate, Hyderabad, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 315/2006/F.No. 178/120/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 13 नवम्बर, 2006

(आयकर)

का.आ. 4687.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ-क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी, 603/4, अपर छठी मंज़िल, ब्लॉक I, 6-3-1192/1/1, "व्हाइट हाऊस", बेगमपैट, हैदराबाद-560016, सर्वे सं. 13/1 और 13/2 एवं 14, सोमाजीगुड़ा अमीरपैट, हैदराबाद अर्बन, जिला हैदराबाद आन्ध्र प्रदेश-500034 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-9-2006 के पत्र सं. 15/159/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब, उक्त अधिनियम की धारा 80झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी, हैदराबाद द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है ।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी, हैदराबाद द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी

(ii) प्रस्तावित स्थान : सर्वे सं. 13/1 और 13/2 एवं 14, सोमाजीगुड़ा, अमीरपैट, हैदराबाद-अर्बन, ज़िला-हैदराबाद, आन्ध्र प्रदेश- 500034

(iii) औद्योगिक पार्क का क्षेत्रफल : 13, 568.03 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

क्रम सं.	एन आई सी संहिता				विवरण
	अनुभाग	प्रभाग	समूह	श्रेणी	
क	7	75	-	-	संचार सेवाएं
ख	8	89	892	-	डाटा प्रोसेसिंग साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
ग	8	89	893	-	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
घ	8	89	894	-	वास्तुशिल्पीय तथा इंजीनियरी एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप
ङ	8	89	895	-	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 90.01%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 09.99%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 03 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 7.00 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 5.00 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 6.50 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : अक्तूबर, 2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका को कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी, हैदराबाद उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी, हैदराबाद ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा, यदि :–

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी, हैदराबाद (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है मैसर्स श्री बालाजी कंस्ट्रक्शन कंपनी, हैदराबाद औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्‌घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 316/2006/फा.सं. 178/123/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 13th November, 2006

(INCOME-TAX)

S.O. 4687.—Whereas the Central Government in exercise of the powers conferred by clause(iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E), dated the

30th March. 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Sri Balaji Construction Company, 603/4, Upper Vth Floor, Block I, 6-3-1192/1/1, "White House", Begumpet, Hyderabad-500 016 is developing an Industrial Park at Survey No. 13/1 & 13/2 & 14, Somajiguda Ameerpet, Hyderabad, Urban, District-Hyderabad-Andhra Pradesh-500 034;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/159/2005-IP&ID dated 25-09-2006 subject to the terms and conditions mentioned in the annexure, to this notification;

Now. therefore. in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Sri Balaji Construction Company, Hyderabad, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Sri Balaji Construction Company, Hyderabad:

1. (i) Name of the Industrial Undertaking : Sri Balaji Construction Company

(ii) Proposed location : Survey No. 13/1 & 13/2 & 14 Somajiguda, Ameerpet Hyderabad Urban, District-Hyderabad, Andhra Pradesh-500 034.

(iii) Area of Industrial Park : 13,568.03 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code

	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	7	75	-	-	Communication Services.
B	8	89	892	-	Data processing, Software development and computer consultancy services.
C	8	89	893	-	Business and management consultancy acivities.
D	8	89	894	-	Architectural and engineering and other technical consultancy activities.
E	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.01 %

(vi) Percentage of allocable area earmarked for commercial use : 09.99 %

(vii) Minimum number of industrial units : 03 Units

(viii) Total investments proposed (Amount in Rupees) : 7.00 crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 5.00 crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 6.50 crores

(xi) Proposed date of commencement of the Industrial Park : October, 2005

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct

entity for the purpose of one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Sri Balaji Construction Company, Hyderabad, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Sri Balaji Construction Company, Hyderabad, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Sri Balaji Construction Company, Hyderabad, transfers the operation and maintenance of the Industrial Park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Sri Balaji Construction Company, Hyderabad, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the Industrial Park.

[Notification No. 316/2006/F.No. 178/123/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 15 नवम्बर, 2006

(आयकर)

का.आ. 4688.—चूंकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और चूंकि मैसर्स गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड, जिसका पंजीकृत कार्यालय 16, सैण्ट मार्क्स रोड, बंगलौर-560001 में है, एम्बेसी गोल्फलिंक्स बिजनेस पार्क चल्लाघट्टा ग्राम, वर्थुर हुबली तालुक, बंगलौर-560024 में एक औद्योगिक पार्क का विकास कर रहा है ;

और चूंकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-07-2006 के पत्र सं. 15/185/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

अब इसलिए, उक्त अधिनियम की धारा 80झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड, बंगलौर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम	:	गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड,
(ii) प्रस्तावित स्थान	:	एम्बेसी गोल्फलिंक्स बिजनेस पार्क, चल्लाघट्टा ग्राम, वर्थुर हुबली तालुक, बंगलौर-560024

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 4,41,629 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

एन आई सी संहिता					विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	7	75	—	—	संचार सेवाएं
ख	8	89	892	—	डाटा प्रोसेसिंग, साफ्टवेयर डेवलपमेंट एवं कम्प्यूटर कंसलटेंसी सेवाएं
ग	8	89	893	—	व्यापार एवं प्रबंधन कंसलटेंसी गतिविधियां
घ	8	89	894	—	वास्तुकला तथा इंजीनियरिंग एवं अन्य तकनीकी कंसलटेंसी गतिविधियां
ङ	8	89	895	—	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 90.19%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 09.81%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 5 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 59,567.98 लाख

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 44,205.08 लाख

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 54,205.08 लाख

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : दिसम्बर, 2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. अब संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती है ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50 से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा ।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) के खंड (ii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधि-सूचना के पैरा 1(i) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा 4(ii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड, बंगलौर ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड, बंगलौर (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को

हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स गोल्फलिंक्स सॉफ्टवेयर पार्क प्राईवेट लिमिटेड, बंगलौर किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 328/2006/फा.सं. 178/103/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 15th November, 2006

(INCOME-TAX)

S.O. 4688.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act. 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E), dated the 30th March. 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Golflinks Software Park Private Limited, having registered office at 16, St. Marks Road, Bangalore-560001, is developing an Industrial Park at Embassy Golflinks Business Park, Challaghatta Village, Varthur Hobli Taluka, Bangalore-560024;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/179/2005-IP&ID dated 25-07-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Golflinks Software Park Private Limited, Bangalore, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Golflinks Software Park Private Limited, Bangalore.

1. (i) Name of the Industrial Undertaking : Golflinks Software Park Private Limited,

(ii) Proposed location : Embassy Golflinks Business Park, Challaghatta Village, Varthur Hobli Taluka, Bangalore-560 024.

(iii) Area of Industrial Park : 4,41,629 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code

S.No.	NIC Code Section	Division	Group	Class	Description
A	7	75	—	—	Communication Services
B	8	89	892	—	Data processing, Software development and computer consultancy services
C	8	89	893	—	Business and management consultancy activities
D	8	89	894	—	Architectural and engineering and other technical consultancy activities
E	8	89	895	—	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.19%

(vi) Percentage of allocable area earmarked for commercial use : 09.81%

(vii) Minimum number of industrial units : 5 Units

(viii) Total investments proposed (Amount in Rupees) : 59,567.98 Lakh

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 44,205.08 Lakh

(x)	Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees)	: 54,205.08 Lakh
(xi)	Proposed date of commencement of the Industrial Park	: December, 2005

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Golflinks Software Park Private Limited, Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Golflinks Software Park Private Limited, Bangalore, shall be solely responsible for any repercussions of such invalidity, if :

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Golflinks Software Park Private Limited, Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Golflinks Software Park Private Limited, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 328/2006/F.No. 178/103/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 15 नवम्बर, 2006

(आयकर)

का.आ. 4689.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स सफीना टावर्स प्राइवेट लिमिटेड, 3, अली अस्कर रोड, बंगलौर-560052, प्लॉट सं. 3, अली अस्कर रोड, तालुका-बंगलौर अर्बन डिस्ट्रिक्ट, बंगलौर, कर्नाटक में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 26-07-2006 के पत्र सं. 15/14/2006-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स सफीना टावर्स प्राइवेट लिमिटेड, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स सफीना टावर्स प्राइवेट लिमिटेड, बंगलौर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स सफीना टावर्स प्राइवेट लिमिटेड

(ii) प्रस्तावित स्थान : प्लॉट सं. 3, अली अस्कर रोड, तालुका बंगलौर अर्बन डिस्ट्रिक्ट- बंगलौर कर्नाटक-560052

(iii) औद्योगिक पार्क का क्षेत्रफल : 37,563.00 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहित				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	7	75	-	-	संचार सेवाएं
ख	8	89	892	-	डाटा प्रोसेसिंग, साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
ग	8	89	893	-	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
घ	8	89	894	-	वास्तुशिल्पीय तथा इंजीनियरी एवं अन्य तकनीकी कंसलैंटसी कार्यकलाप
ङ	8	89	895	-	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 90.16%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 09.84%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 03 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 40 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 21 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 36.75 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : मार्च, 2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों, जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स सफीना टावर्स प्राइवेट लिमिटेड, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स सफीना टावर्स प्राइवेट लिमिटेड, बंगलौर ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन-पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स सफीना टावर्स प्राइवेट लिमिटेड, बंगलौर (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है मैसर्स सफीना टावर्स प्राइवेट लिमिटेड, बंगलौर औद्योगिक पार्क स्कीम 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्‌घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 329/2006/फा.सं. 178/119/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 15th November, 2006

(INCOME-TAX)

S.O. 4689.—Whereas the Central Government in exercise of the powers conferred by clause(iii) of sub-section(4) of section 80-IA of the Income-tax Act, 1961 (43 of 1961)(hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Safina Towers Private Limited, 3, Ali Asker Road, Bangalore-560052, is developing an Industrial Park at Plot No. 3, Ali Asker Road, Taluka-Bangalore Urban District, Bangalore, Karnataka;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/14/2006-IP&ID dated 26-07-2006 subject to the terms and conditions mentioned in the annexure, to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Safina Towers Private Limited, Bangalore, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Safina Towers Private Limited, Bangalore

1. (i) Name of the Industrial Undertaking : Safina Towers Private Limited,

(ii) Proposed location : Plot No. 3, Ali Asker Road, Taluka Bangalore Urban District-Bangalore, Karnataka-560052,

(iii) Area of Industrial Park : 37,563,00 Square Metres

(iv) Proposed activities

Nature of Industrial activity with NIC Code

	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	7	75	-	-	Communication Services
B	8	89	892	-	Data processing, Software development and computer consultancy services

S.No.	NIC Code Section	Division	Group	Class	Description
C	8	89	893	-	Business and manage--ment consultancy acivities
D	8	89	894	-	Architectural and engineering and other technical consultancy activities.
E	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.16 %

(vi) Percentage of allocable area earmarked for commercial use : 09.84 %

(vii) Minimum number of industrial units : 03 Units

(viii) Total investments proposed: (Amount in Rupees) : 40 crores

(ix) Investment on built up space: for Industrial use (Amount in Rupees) : 21 crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 36.75 crores

(xi) Proposed date of commencement of the Industrial Park : March, 2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s.Safina Towers Private Limited, Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income-tax Act, 1961.

9. The approval will be invalid and M/s. Safina Towers Private Limited, Bangalore, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Safina Towers Private Limited, Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Safina Towers Private Limited, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 329/2006/F.No. 178/119/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 15 नवम्बर, 2006

(आयकर)

का.आ. 4690.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स एस डी ई इंजीनियर्स लिमिटेड, मीनाक्षी हाऊस, 8-2-418, रोड सं. 7, बंजारा हिल्स, हैदराबाद-500034 सर्वे सं. 12 पी, कोन्डापुर विलेज, सेरिलिंगामपल्ली, रंगा रेड्डी डिस्ट्रिक, आन्ध्र प्रदेश में "एस डी ई प्रमिला टैक्नो पार्क" नामक एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 29-9-2004 के पत्र सं. 15/24/2004-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

अब, इसलिए, उक्त अधिनियम की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स एस डी ई इंजीनियर्स लिमिटेड, हैदराबाद द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स एस डी ई इंजीनियर्स लिमिटेड, हैदराबाद द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम : एस डी ई इंजीनियर्स लिमिटेड

(ii) प्रस्तावित स्थान : एस डी ई प्रमिला टैक्नो पार्क, सर्वे सं. 12 पी, कोन्डापुर विलेज, सेरिलिंगामपल्ली, जिला रंगा रेड्डी, आन्ध्र प्रदेश ।

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 45254.61 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

क्रम सं.	एन आई सी संहिता अनुभाग	प्रभाग	समूह	श्रेणी	विवरण
क	8	89	892	–	डाटा प्रोसेसिंग साफ्टवेयर डेवलपमेंट एवं कम्प्यूटर कंसलटैंसी सेवाएं
ख	8	89	893	–	व्यापार एवं प्रबंधन कन्सलटेंसी गतिविधियां
ग	8	89	894	–	वास्तुकला एवं इंजीनियरिंग एवं अन्य तकनीकी कंसलटैंसी गतिविधियां

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 90.40%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 9.60%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 42 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 6000 लाख

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 2200 लाख

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 5250 लाख

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : सितम्बर 2004

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. अब संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो

औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाईयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स एस डी ई इंजीनियर्स लिमिटेड, हैदराबाद उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स एस डी ई इंजीनियर्स लिमिटेड, हैदराबाद ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स एस डी ई इंजीनियर्स लिमिटेड, हैदराबाद (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अन्तरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स एस डी ई इंजीनियर्स लिमिटेड, हैदराबाद किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देता ।

[अधिसूचना सं. 330/2006/फा.सं. 178/100/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 15th November, 2006

(INCOME-TAX)

S.O. 4690.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. SDE Engineers Limited, Meenakshi House, 8-2-418, Road No. 7, Banjara Hills, Hyderabad-500034, is developing an Industrial Park, namely "SDE Pranneela Techno Park" at Survey No. 12P, Kondapur Village, Serilingampally, Ranga Reddy District, Andhra Pradesh;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/24/2004-IP&ID dated 22-09-2004 subject to the terms and conditions mentioned in the annexure, to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. SDE Engineers Limited, Hyderabad as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. SDE Engineers Limited, Hyderabad.

1. (i) Name of the Industrial Undertaking : SDE Engineers Limited

(ii) Proposed location : SDE Prameela Techno Park, Survey No. 12 P, Kondapur Village, Serilingampally, Ranga Reddy District, Andhra Pradesh.

(iii) Area of Industrial : 45,254.61 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC Code

S.No.	NIC Code Section	Division	Group	Class	Description
A	8	89	892	-	Data processing, Software development and computer consultancy service
B	8	89	893	-	Business and management consultancy acivities
C	8	89	894	-	Architectural and engineering and other technical consultancy activities.

(v) Percentage of allocable area carmarked for Industrial use : 90.40 %

(vi) Percentage of allocable area carmarked for commercial use : 9.60 %

(vii) Minimum number of industrial units : 42 Units

(viii) Total investments proposed (Amount in Rupees) : 6000 lakhs

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 2200 lakhs

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 5220 lakhs

(xi) Proposed date of commencement of the Industrial Park : September, 2004

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E), dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central Tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. SDE Engineers Limited Hyderabad, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. SDE Engineers Ltd., Hyderabad shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. SDE Engineers Limited, Hyderabad, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. SDE Engineers Ltd., Hyderabad, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 330/2006 /F.No. 178/100/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 15 नवम्बर, 2006

(आयकर)

का.आ. 4691.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80झक की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च,'1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड, सं. 617, अन्ना सलाई, चेन्नई, प्लॉट सं. 1 (एस पी), इंडस्ट्रियल एस्टेट, गिंडी, तालुका-गिंडी, जिला चेन्नई, तमिलनाडु-600032 में एक औद्योगिक पार्क का विकास कर रहा है।

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-7-2006 के पत्र सं. 15/12/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क को अनुमोदित किया है;

अब, इसलिए, उक्त अधिनियम की धारा 80झक की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड, चेन्नई द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड

(ii) प्रस्तावित स्थान : प्लॉट सं. 1(एस पी), इंडस्ट्रियल एस्टेट, गिंडी, तालुका-गिंडी, जिला चेन्नई, तमिलनाडु-600032

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 1,93,247.44 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

क्रम सं.	एन आई सी संहिता अनुभाग	प्रभाग	समूह	श्रेणी	विवरण
क	7	75	–	–	संचार सेवाएं
ख	8	89	892	–	डाटा प्रोसेसिंग साफ्टवेयर डेपलमेंट एवं कम्प्यूटर कन्सल्टेन्सी सेवाएं
ग	8	89	893	–	व्यापार एवं प्रबंधन कन्सल्टेन्सी गतिविधियां
घ	8	89	894	–	वास्तुकला एवं इंजीनियरिंग एवं अन्य तकनीकी कन्सल्टेन्सी गतिविधियां
ङ	8	89	895	–	तकनीकी प्रयोग एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 92.33%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 07.66%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 5 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 252.19 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 111.32 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 193.05 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 31-03-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. अवसंरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका की कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण को द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अधिवासित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड, चेन्नई उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (ii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (i) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (ii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड, चेन्नई ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड, चेन्नई (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स खिवराज टैक पार्क प्राइवेट लिमिटेड, चेन्नई किसी भी शर्त के अनुपालन में असफल रहती है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 331/2006/फा. सं. 178/92/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 15th November, 2006

(INCOME-TAX)

S.O. 4691.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act., 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E). dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the Ist day of April, 2002, for the period beginning on the Ist day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Khivraj Tech Park Private Limited, No. 617, Anna Salai, Chennai, is developing on Industrial Park, at Plot No. 1 (SP), Industrial Estate, Guindy, Taluka-Guindy, District-Chennai, Tamil Nadu-600032;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/12/2005-IP&ID, dated 25-7-2006 subject to the terms and conditions mentioned in the annexure, to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Khivraj Tech Park Private Limited, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Khivraj Tech Park Private Limited, Chennai.

1. (i) Name of the Industrial Undertaking : Khivraj Tech Park Private Limited

(ii) Proposed location : Plot No. 1 (SP), Industrial Estate, Guindy, Taluka-Guindy, District-Chennai, Tamil Nadu-600032.

(iii) Area of Industrial Park : 1,93,247.44 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code

S.No.	NIC Code Section	Division	Group	Class	Description
A	7	75	—	—	Communication Services.
B	8	89	892	—	Data Processing Software development and Computer consultancy services.
C	8	89	893	—	Business and Management Consultancy activities.
D	8	89	894	—	Architectural and Engineering and other Technical consultancy activities.
E	8	89	895	—	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 92.33 %

(vi) Percentage of allocable area earmarked for commercial use : 07.66 %

(vii) Minimum number of industrial units : 5 Units

(viii) Total investments proposed: (Amount in Rupees) : 252.19 Crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 111.32 Crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 193.05 Crores

(xi) Proposed date of commencement of the Industrial Park : 31-03-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than 50% of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Khivraj Tech Park Private Limited,Chennai, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Khivraj Tech Park Private Limited,Chennai, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s.Khivraj Tech Park Private Limited,Chennai, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s.Khivraj Tech Park Private Limited,Chennai, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 331/2006/F.No. 178/92/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 16 नवम्बर, 2006

(आयकर)

का.आ. 4692.—जबकि आयकर अधिनियम, 1961 (1961 का 43) यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स जे वी पी सॉफ्ट प्राइवेट लिमिटेड, यूनिट सं. 5, सॉफटवेयर यूनिट्स लेआउट, इन्फोसिटी, ए पी आई आई सी लिमिटेड, माधापुर, हैदराबाद यूनिट सं. 5, सॉफ्टवेयर यूनिट्स लेआउट, इन्फोसिटी, ए पी आई आई सी लिमिटेड, माधापुर, हैदराबाद में एक औद्योगिक पार्क का विकास कर रहा है।

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 12-04-2005 के पत्र सं. 15/53/04-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क को अनुमोदित किया है;

अब इसलिए, उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स जे वे पी सॉफ्ट प्राइवेट लिमिटेड, हैदराबाद द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स जे वी पी सॉफ्ट प्राइवेट लिमिटेड, हैदराबाद द्वारा औद्योगिक पार्क गठित किये जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम : जे वी पी सॉफ्ट प्राइवेट लिमिटेड

(ii) प्रस्तावित स्थान : यूनिट सं. 5, सॉफ्टवेयर यूनिट्स लेआउट, इन्फोसिटी, ए पी आई आई सी लिमिटेड, माधापुर, हैदराबाद

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 1.501 एकड़

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप				
एन आई सी संहिता				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी
क	8	89	892	892.1 कम्प्यूटर कन्सल्टेन्सी सेवाएं
ख	8	89	892	892.2 सॉफ्टवेयर आपूर्ति सेवाएं

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 80%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : शून्य

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 10 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 25,00,00,000/-

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 1,03,89,477/-

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 23,96,10,553/-

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : अक्तूबर, 2003

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. अवसंरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स जे वी पी सॉफ्ट प्राइवेट लिमिटेड, हैदराबाद उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स जे वी पी सॉफ्ट प्राइवेट लिमिटेड, हैदराबाद ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स जे वी पी सॉफ्ट प्राइवेट लिमिटेड, हैदराबाद (अर्थात अन्तरणकर्ता उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है यदि मैसर्स जे वी पी सॉफ्ट प्राइवेट लिमिटेड, हैदराबाद किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देगा ।

[अधिसूचना सं. 332/2006/फा.सं. 178/55/2005-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 16th November, 2006

(INCOME-TAX)

S.O. 4692.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act. 1961 (43 of 1961) (hereinafter referred to as the said Act), has

framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. JVP Soft Private Limited, Unit No. 5, Software Units Layout, Infocity, APIIC Limited, Madhapur, Hyderabad, is developing an Industrial Park at Unit No. 5, Software Units Layout, Infocity, APIIC Limited, Madhapur, Hyderabad;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/53/04-IP&ID dated 12-4-2005 subject to the terms and conditions mentioned in the annexure, to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s JVP Soft Private Limited, Hyderabad, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. JVP Soft Private Limited, Hyderabad.

1. (i) Name of the Industrial Undertaking : JVP Soft Private Limited

(ii) Proposed location : Unit No. 5, Software Units Layout, Infocity, APIIC Limited, Madhapur, Hyderabad.

(iii) Area of Industrial Park : 1.501 Acres

(iv) Proposed activities

Nature of Industrial activity with NIC code

S.No.	NIC Code Section	Division	Group	Class	Description
A	8	89	892	892.1	Computer Consultancy Services.
B	8	89	892	892.2	Software supply services.

(v) Percentage of allocable area earmarked for Industrial use : 80 %

(vi) Percentage of allocable area earmarked for commercial use : Nil

(vii) Minimum number of industrial units : 10 Units

(viii) Total investments proposed: (Amount in Rupees) : 25,00,00,000/-

(ix) Investment on built up space: for Industrial use (Amount in Rupees) : 1,03,89,477/-

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 23,96,10,553/-

(xi) Proposed date of commencement of the Industrial Park : October, 2003

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. JVP Soft Private Limited, Hyderabad, shall continue to operate the Industrial Park during the period

in which the benefits under clause (iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. JVP Soft Private Limited, Hyderabad, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. JVP Soft Private Limited, Hyderabad, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. JVP Soft Private Limited, Hyderabad, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 332/2006 /F. No. 178/55/2005-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 16 नवम्बर, 2006

(आयकर)

का.आ. 4693.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स श्री ट्रानिक्स एंटरप्राइज़िज़, 26ए, इलेक्ट्रॉनिक सिटी, होसुर रोड, बंगलौर-560100, 26ए इलेक्ट्रॉनिक सिटी, होसुर रोड, बंगलौर, कर्नाटक में एक औद्योगिक पार्क का विकास कर रहा है।

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-07-2006 के पत्र सं. 15/80/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब, उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स श्री ट्रानिक्स एंटरप्राइज़िज़, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स श्री ट्रानिक्स एंटरप्राइज़िज़, बंगलौर द्वारा औद्योगिक पार्क स्थापित किए जाने हेतु अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स श्रीट्रॉनिक्स एंटरप्राइज़िज़

(ii) प्रस्तावित स्थान बंगलौर : 26ए, इलेक्ट्रॉनिक सिटी, होसुर रोड, कर्नाटक-560 100

(iii) औद्योगिक पार्क का क्षेत्रफल : 10037 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहिता				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	8	89	892	–	डाटा प्रोसेसिंग, साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
ख	8	89	893	–	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
ग	8	89	894	–	वास्तुशिल्पीय तथा इंजीनियरी एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 91.00%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 09.00%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 04 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 11.00 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : शून्य

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 10.235 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : जून, 2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका को कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा ।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स श्री ट्रॉनिक्स एंटरप्राइज़िज़, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स श्री ट्रॉनिक्स एंटरप्राइज़िज़, बंगलौर ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स श्री ट्रॉनिक्स एंटरप्राइज़िज़, बंगलौर (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है मैसर्स श्री ट्रॉनिक्स एंटरप्राइज़िज़, बंगलौर औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 333/2006/फा.सं. 178/107/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 16th November, 2006

(INCOME-TAX)

S.O. 4693.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the

30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Shree Tronics Enterprises, 26-A, Electronic City, Hosur Road, Bangalore-560 100, is developing an Industrial Park at 26A, Electronic City, Hosur Road, Bangalore, Karnataka-560 100;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/80/2005-IP&ID dated 25-7-2006 subject to the terms and conditions mentioned in the annexure, to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Shree Tronics Enterprises, Bangalore, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Shree Tronics Enterprises, Bangalore.

1. (i) Name of the Industrial Undertaking : Shree Tronics Enterprises

(ii) Proposed location : 26A, Electronic City Hosur Road, Bangalore, Karnataka-560 100.

(iii) Area of Industrial Park : 10037 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code

S.No.	NIC Code Section	Division	Group	Class	Description
A	8	89	892	—	Data Processing, Software Development and Computer Consultancy Services.
B	8	89	893	—	Business and Management consultancy activities
C	8	89	894	—	Architectural and Engineering and other technical consultancy activities.

(v) Percentage of allocable area earmarked for Industrial use : 91.00 %

(vi) Percentage of allocable area earmarked for commercial use : 09.00%

(vii) Minimum number of industrial units : 04 Units

(viii) Total investments proposed: (Amount in Rupees) : 11.00 crores

(ix) Investment on built up space: for Industrial use (Amount in Rupees) : Nil

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 10.235 crores

(xi) Proposed date of commencement of the Industrial Park : June, 2005

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty percent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Shree Tronics Enterprises, Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-A of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Shree Tronics Enterprises, Bangalore, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Shree Tronics Enterprises, Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Shree Tronics Enterprises, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 333/2006-F. No. 178/107/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 16 नवम्बर, 2006

(आयकर)

का.आ. 4694.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स हिन्दुमल बालमुकुंद इन्वेस्टमेन्ट कंपनी प्राइवेट लिमिटेड, 1105, रविवार पेठ, पुणे-411002, लोहिया जैन आई टी पार्क, प्लॉट सं. 1, सर्वे सं. 150/ए 1, 1+2, कोथुर्ड, पुणे में एक औद्योगिक पार्क का विकास कर रहा है।

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-07-2006 के पत्र सं. 15/165/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क को अनुमोदित किया है;

अब, इसलिए, उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स हिन्दुमल बालमुकुंद इन्वेस्टमेन्ट कंपनी प्राइवेट लिमिटेड, पुणे द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स हिन्दुमल बालमुकुंद इन्वेस्टमेन्ट कंपनी प्राइवेट लिमिटेड, पुणे द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम : हिन्दुमल बालमुकुंद इन्वेस्टमेन्ट कंपनी प्राइवेट लिमिटेड

(ii) प्रस्तावित स्थान : मैसर्स लोहिया जैन आई टी पार्क, प्लॉट सं. 1, सर्वे सं. 150/ए 1, 1+2, कोथुर्ड, पुणे

(iii) औद्योगिक पार्क का क्षेत्रफल : भूमि—4750 वर्ग मीटर
निर्मित क्षेत्र—9500 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप					
एन आई सी संहिता					विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
ख	8	89	892	–	डाटा प्रोसेसिंग साफ्टवेयर डेवलपमेंट एवं कम्प्यूटर कंसलटैंसी सेवाएं

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 100%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : शून्य

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 145 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 10,00,00,000

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 3,96,48,000

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 6,26,67,000

(xi) औद्योगिक पार्क के आरंभ होने की : 31-03-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. अब संरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय है एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50 से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स हिन्दुमल बाल मुकुंद इन्वेस्टमेन्ट कम्पनी प्राइवेट लिमिटेड, पुणे उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (ii) के अन्तर्गत लाभ लिए जाने हैं।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (i) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (ii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स हिन्दुमल बालमुकुंद इन्वेस्टमेन्ट कंपनी प्राइवेट लिमिटेड, पुणे ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स हिन्दुमल बालमुकुंद इन्वेस्टमेन्ट कंपनी प्राइवेट लिमिटेड, पुणे (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अन्तरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है मैसर्स हिन्दुमल बालमुकुंद इन्वेस्टमेन्ट कंपनी प्राइवेट लिमिटेड, पुणे किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्‌घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 334/2006/फा.सं. 178/88/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 16th November, 2006

(INCOME-TAX)

S.O. 4694.—Whereas the Central Government in exercise of the powers conferre by clause(iii) of sub-section (4) of Section 80-IA of the Income-tax Act. 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E). dated the 30th March. 1999, for the period beginning on the 1st day

of April. 1997 and ending on the 31st day of March. 2002 and *vide* number S.O. 354(E) dated the 1st day of April. 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March. 2006;

And whereas M/s. Hindumal Balmukund Investment Company Private Limited, 1105, Raviwar Peth, Pune-411 002, is developing an Industrial Park at Lohia Jain IT Park, Plot No. 1, Surey No. 150/A1, 1+2, Kothurd, Pune;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/38/05-IP&ID dated 6-12-2005 subject to the terms and conditions mentioned in the annexure, to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act. the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Hindumal Balmukund Investment Company Private Limited, Pune as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Hindumal Balmukund Investment Company Private Limited, Pune.

1. (i) Name of the Industrial Undertaking : Hindumal Balmukund Investment Company Private Limited

(ii) Proposed location : M/s. Lohia Jain IT Park, Plot No. 1, Surey No. 150/A1, 1+2, Kothurd, Pune.

(iii) Area of Industrial Park : Land—4750 Square Meters
Built up area—9500 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code					
	NIC Code				Description
S.No.	Section	Division	Group	Class	
B	8	89	892	—	Data Processing, Software Development and Computer Consultancy Services.

(v) Percentage of allocable area earmarked for Industrial use : 100%

(vi) Percentage of allocable area earmarked for commercial use : Nil

(vii) Minimum number of industrial units : 14 Units

(viii) Total investments proposed (Amount in Rupees) : 10,00,00,000

(ix) Investment on built up space: for Industrial use (Amount in Rupees) : 3,96,48,000

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 6,26,67,000

(xi) Proposed date of commencement of the Industrial Park : 31-3-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty percent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Hindumal Balmukund Investment Company Private Limited, Pune, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Hindumal Balmukund Investment Company Private Limited, Pune, shall be solely responsible for any repercussions of such invalidity, if—

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Hindumal Balmukund Investment Company Private Limited, Pune, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Hindumal Balmukund Investment Company Private Limited, Pune, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 334/2006/F.No. 178/88/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 16 नवम्बर, 2006

(आयकर)

का.आ. 4695.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड, जिसका पंजीकृत कार्यालय 111ए, महात्मा गांधी रोड, फोर्ट, मुम्बई-400023 में है, सीटीएस सं. 1406, ए/28 ए, मलाड (पश्चिम), मुम्बई, महाराष्ट्र-400064 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-7-2006 के पत्र सं. 15/185/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

अब इसलिए, उक्त अधिनियम की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड, मुम्बई द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड, मुम्बई द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम : हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड

(ii) प्रस्तावित स्थान : सी टी एस सं. 1406, ए/28 ए, मलाड (पश्चिम), मुम्बई, महाराष्ट्र

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 83,888.36 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहित				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	4	-	-	-	बिजली, गैस और पानी
ख	7	75	-	-	संचार सेवाएं
ग	8	89	892	-	डाटा प्रोसेसिंग साफ्टवेयर विकास एवं कम्प्यूटर परामर्शी सेवाएं
घ	8	89	893	-	व्यवसाय एवं प्रबंध परामर्शी गतिविधियां

एन आई सी संहित					विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
ङ	8	89	894	-	वास्तुकला एवं इंजीनियरिंग एवं अन्य तकनीकी परामर्शी सेवाएं
ञ	8	89	895	-	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 90.00%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 10.00%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 11 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 189.90 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 138.25 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 152.34 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 31-3-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. अवसंरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50 से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड, मुम्बई उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) के खंड (ii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (i) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा 4 (ii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड, मुम्बई ऐसी किसी अवैधता के प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा यदि–

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड, मुम्बई (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स हैमलेट कंस्ट्रक्शन्स (इंडिया) प्राईवेट लिमिटेड, मुम्बई की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 335/2006/फा. सं. 178/89/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 16th November, 2006

(INCOME-TAX)

S.O. 4695.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.0.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Hamlet Constructions (India) Private Limited, having Registered Office at 111A, Mahatma Gandhi Road, Fort, Mumbai-400023, is developing an Industrial Park at CTS No. 1406, A/28 A, Malad (West), Mumbai, Maharashtra-400064;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry Letter No. 15/185/2005-IP&ID dated 25-7-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-1A of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Hamlet Constructions (India) Private Limited, Mumbai, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Hamlet Constructions (India) Private Limited, Mumbai.

1. (i) Name of the Industrial Undertaking : Hamlet Constructions (India) Private Limited,

(ii) Proposed location : CTS No. 1406, A/28 A, Malad (West), Mumbai, Maharashtra-400064.

(iii) Area of Industrial Park : 83,888.36 Square Metres

(iv) Proposed activities :

Nature of Industrial activity with NIC Code

NIC Code				Description
S.No.	Section	Division	Group	Class	
A	4	-	-	-	Electricity, Gas and Water
B	7	75	-	-	Communication Services
C	8	89	892	-	Data Processing, Software development and computer consultancy services
D	8	89	893	-	Business and Management consultancy acivities
E	8	89	894	-	Architectural and engineering and other technical consultancy activities
F	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.00 %

(vi) Percentage of allocable area earmarked for commercial use : 10.00 %

(vii) Minimum number of industrial units : 11 Units

(viii) Total investments proposed: (Amount in Rupees) : 189.90 crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 138.25 crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 152.34 crores

(xi) Proposed date of commencement of the Industrial Park : 31-3-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more

than 50% of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more State or Central Tax Laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Hamlet Constructions (India) Private Limited, Mumbai, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80IA of the Income-tax Act, 1961.

9. The approval will be invalid and M/s.Hamlet Constructions (India) Private Limited, Mumbai, shall be solely responsible for any repercussions of such invalidity, if :—

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Hamlet Constructions (India) Private Limited, Mumbai, transfers the operation and maintenance of the Industrial Park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this Scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Hamlet Constructions (India) Private Limited, Mumbai, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the Industrial Park.

[Notification No. 335/2006/F.No. 178/89/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 16 नवम्बर, 2006

(आयकर)

का.आ. 4696.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लि. जिसका पंजीकृत कार्यालय उद्योग भवन, तिलक मार्ग, जयपुर-302005 में है, एक्सपोर्ट प्रोमोशन इंडस्ट्रियल पार्क, सीतापुरा, जयपुर, राजस्थान-302022 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 24-4-2006 के पत्र सं. 15/203/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क को अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है ।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है।

1. (i)	औद्योगिक उपक्रम का नाम	:	राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड
(ii)	प्रस्तावित स्थान	:	एक्सपोर्ट प्रोमोशन इंडस्ट्रियल पार्क, सीतापुरा, जयपुर राजस्थान-302022

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 337.50 एकड़

(iv) प्रस्तावित कार्यकलाप :

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहिता		विवरण
क्रम सं.	अनुभाग प्रभाग समूह श्रेणी		
क	2एंड3 -- - -		विनिर्माण कार्यकलाप
(v)	औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत	:	95.64%
(vi)	वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत	:	4.36%
(vii)	औद्योगिक यूनिटों की न्यूनतम संख्या	:	271 यूनिटें
(viii)	प्रस्तावित कुल निवेश (राशि रुपए में)	:	4134.00 लाख
(ix)	औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में)	:	शून्य
(x)	अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में)	:	2730.17 लाख
(xi)	औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि	:	31-3-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. अवसंरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा यदि:

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा

किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 336/2006/फा.सं. 178/94/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 16th November, 2006

(INCOME-TAX)

S.O. 4696.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section(4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a Scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* Number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* Number S.O. 354(E), dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Rajasthan State Industrial Development & Investment Corporation Limited, having registered office at Udyog Bhawan, Tilak Marg, Jaipur-302005 is developing an Industrial Park at Export Promotion Industrial Park, Sitapura, Jaipur, Rajasthan-302 022;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/203/2005-IP&ID dated 24-4-2006 subject to the terms and conditions mentioned in the Annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur.

1. (i)	Name of the Industrial Undertaking	: Rajasthan State Industrial Development & Investment Corporation Limited
(ii)	Proposed location	: Export Promotion Industrial Park, Sitapura, Jaipur, Rajasthan-302022
(iii)	Area of Industrial Park	: 337.50 Acres
(iv)	Proposed activities	:

Nature of Industrial activity with NIC Code

	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	2&3	-	-	-	Manufacturing

(v)	Percentage of allocable area earmarked for Industrial use	: 95.64%
(vi)	Percentage of allocable area earmarked for commercial use	: 4.36%
(vii)	Minimum number of industrial units	: 271 Units
(viii)	Total investments proposed (Amount in Rupees)	: 4134.00 lakhs
(ix)	Investment on built-up space for Industrial use (Amount in Rupees)	: Nil
(x)	Investment on Infrastructure Development including investment on built-up space for industrial use (Amount in Rupees)	: 2730.17 lakhs
(xi)	Proposed date of commencement of the Industrial Park	: 31-03-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E), dated the 1st April, 2002, shall occupy more than 50% of the allocable industrial area of an Industrial Park. For this

purpose a unit means any separate and distinct entity for the purpose of one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Beard or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of Sub-section (4) of Section 80-1A of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1(xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under Sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/ misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 336/2006/F.No. 178/94/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 16 नवम्बर, 2006

(आयकर)

का.आ. 4697.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स सोमू प्रापर्टीज प्रा. लिमिटेड, मनी टैरेस, 100, के. एच. रोड (डाबल रोड), बंगलौर-560027, सालारपुरिया एस्सैंट, 77, कोरामंगला, ज़िला-बंगलौर, कर्नाटक-560037 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-7-2006 के पत्र सं. 15/22/2006-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स सोमू प्रापर्टीज प्राइवेट लिमिटेड, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स सोमू प्रापर्टीज प्राइवेट लिमिटेड, बंगलौर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स सोमू प्रापर्टीज प्राइवेट लिमिटेड

(ii) प्रस्तावित स्थान : सालारपुरिया एस्सैंट, 77, कोरामंगला, जिला-बंगलौर, कर्नाटक-560037

(iii) औद्योगिक पार्क का क्षेत्रफल: 7240.31 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

एन आई सी संहिता					विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	8	89	892	–	डाटा प्रोसेसिंग साफ्टवेयर विकास तथा कम्प्यूटर परामर्शी सेवाएं
ख	8	89	893	–	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
ग	8	89	894	–	वास्तुशिल्पीय एवं इंजीनियरींग एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप
घ	8	89	895	–	तकनीकी परीक्षण तथा विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 100.00%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : शून्य

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 03 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में): 20.84 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 3.72 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 14.64 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 28-02-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों, जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स सोमू प्रापर्टीज प्राइवेट लिमिटेड, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स सोमू प्रापर्टीज प्राईवेट लिमिटेड, बंगलौर ऐसी किसी प्रतिक्रिया की अवैधता प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स सोमू प्रापर्टीज प्राइवेट लिमिटेड, बंगलौर (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ

प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है मैसर्स सोमू प्रापर्टीज प्राइवेट लिमिटेड, बंगलौर औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 337/2006/फा.सं. 178/87/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 16th November, 2006

(INCOME-TAX)

S.O. 4697.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of Sub-section(4) of Section 80-IA of the Income-tax Act. 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E). dated the 30th March. 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April. 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Somu Properties Private Limited, Money Terrace, 100, K. H. Road, (Double Road), Bangalore-560 027, is developing an Industrial Park at Salapuria Ascent, 77, Koramangala, District–Bangalore, Karnataka-560037;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/22/2006-IP&ID dated 25-7-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore in exercise of the powers conferred by clause (iii) of Sub-section (4) of Section 80-1A of the said Act., the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Somu Properties Private Limited, Bangalore, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Somu Properties Private Limited, Bangalore.

1. (i) Name of the Industrial Undertaking : Somu Properties Private Limited,

(ii) Proposed location : SALARPURIA Ascent, 77, Koramangala, District-Bangalore, Karnataka–560 037.

(iii) Area of Industrial Park : 7240.31 Square Meters

(iv) Proposed activities :

Nature of Industrial activity with NIC code

	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	8	89	892	-	Data processing, software development and computer consultancy services.
B	8	89	893	-	Business and management consultancy activites.
C	8	89	894	-	Architectural and engineering and other technical consultancy activities.
D	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 100.00%

(vi) Percentage of allocable area earmarked for commercial use : Nil

(vii) Minimum number of industrial units : 03 Units

(viii) Total investments proposed (Amount in Rupees) : 20.84 crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 3.72 crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 14.64 crores

(xi) Proposed date of commencement of the Industrial Park : 28-02-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network,

generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph B(b) of paragraph 6 of S. O. 354(E), dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more State or Central Tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Somu Properties Private Limited, Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income Tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income-tax Act, 1961.

9. The approval will be invalid and M/s. Somu Properties Private Limited, Bangalore, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Somu Properties Private Limited, Bengolore, transfers the operation and maintenance of the Industrial Park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Somu Properties Private Limited, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the Industrial Park.

[Notification No. 337/2006/F.No. 178/87/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4698.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स क्वार्डो इन्फो टैक्नोलॉजीज़ प्राइवेट लिमिटेड, मनी, टैरेंस, 100, के एच रोड, (डबल रोड), बंगलौर-560 027, इलेक्ट्रॉनिक सिटी (फेज़ 2), बंगलौर, कर्नाटक-560 100 में "सालारपुरिया इन्फोज़ोन" नाम से एक औद्योगिक पार्क का विकास कर रहा है ;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 12-12-2005 के पत्र सं. 15/82/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स क्वार्डो इन्फो टैक्नोलॉजीज़ प्राईवेट लिमिटेड, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है ।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स क्वार्डो इन्फो टैक्नोलॉजीज़ प्राइवेट लिमिटेड, बंगलौर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स क्वार्डो इन्फो टैक्नोलॉजीज़ प्राईवेट लिमिटेड

(ii) प्रस्तावित स्थान : सालारपुरिया इन्फोज़ोन इलेक्ट्रॉनिक सिटी (फेज़ 2) बंगलौर, कर्नाटक-560 100

(iii) औद्योगिक पार्क का क्षेत्रफल: 43803.75 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहिता				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह		श्रेणी
क	8	89	892	-	डाटा प्रोसेसिंग, साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
ख	8	89	893	-	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
ग	8	89	894	-	वास्तुशिल्पीय तथा इंजीनियरी एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप
घ	8	89	895	-	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 100%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : शून्य

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 3 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 58.21 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 20.75 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 56.21 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 31-03-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा ।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स क्वार्डो इन्फो टैक्नोलॉज़ीज प्राईवेट लिमिटेड, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स क्वार्डो इन्फो टैक्नोलॉजीज़ प्राईवेट लिमिटेड, बंगलौर ऐसी किसी प्रातिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स क्वार्डो इन्फो टैक्नोलॉजीज प्राईवेट लिमिटेड, बंगलौर (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और

संवर्धन विभाग उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है मैसर्स क्वार्डो इन्फो टैक्नोलॉजीज़ प्राईवेट लिमिटेड, बंगलौर औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 344/2006/फा.सं. 178/43/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4698.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of Sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E), dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Quadro Info Technologies Private Limited, Money Terrance, 100, K. H. Road, (Double Road), Bangalore-560 027, is developing an Industrial Park, namely "Salarpuria Infozone" at Electronic City (Phase 2), Bangalore, Karnataka-560 100;

And whereas Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/82/2005-IP&ID dated 12-12-2005 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Quadro Info Technologies Private Limited Bangalore, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Quadro Info Technologies Private Limited, Bangalore.

1. (i) Name of the Industrial Urdertaking : Quadro Info Technologies Private Limited

(ii) Proposed location : Salarpuria Infozone Electronic City (Phase 2), Bangalore, Karnataka–560 100.

(iii) Area of Industrial Park : 43803.75 Square Meters

(iv) Proposed activities :

Nature of Industrial activity with NIC code

	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	8	89	892	-	Data processing, software development and computer consultancy services.
B	8	89	893	-	Business and Management consultancy activites.
C	8	89	894	-	Architectural and engineering and other technical consultancy activities.
D	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 100%

(vi) Percentage of allocable area earmarked for commercial use : Nil

(vii) Minimum number of industrial units : 3 Units

(viii) Total investments proposed (Amount in Rupees) : 58.21 crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 20.75 crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 56.21 crores

(xi) Proposed date of commencement of the Industrial Park : 31-03-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S. O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Quadro Info Technologies Private Limited, Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80IA of the Income-tax Act, 1961.

9. The approval will be invalid and M/s. Quadro Info Technologies Private Limited, Bangalore, shall be solely responsible for any repercussions of such invalidity, if—

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Quadro Info Technologies Private Limited, Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Quadro Info Technologies Private Limited, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 344/2006/F.No. 178/43/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4699.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स क्लासिक रियल्टी प्राइवेट लि., 41 विट्ठल माल्या रोड, बंगलौर सर्वे सं. 12/1 और 12/2, 13/1 से 3, न्यानप्पा शैट्टी पाल्या, जे. पी. नगर, बन्नेरघट्टा मेन रोड, बंगलौर, कर्नाटक-560001 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 15-2-2005 के पत्र सं. 15/3/05-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के

रूप में मैसर्स क्लासिक रियल्टी प्राइवेट लिमिटेड, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है ।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स क्लासिक रियल्टी प्राइवेट लिमिटेड, बंगलौर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स क्लासिक रियल्टी प्राइवेट लिमिटेड,

(ii) प्रस्तावित स्थान : सर्वे सं. 12/1 और 12/2, 13/1 से 3, न्यानप्पा शैट्टी पाल्या, जे. पी. नगर, बन्नेरघट्टा मेन रोड, बंगलौर कर्नाटक-560001

(iii) औद्योगिक पार्क का क्षेत्रफल: 77,983.28 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहिता			-	विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह श्रेणी		
क	8	89	892	-	डाटा प्रोसेसिंग साफ्टवेयर विकास एवं कम्प्यूटर कंसलटैंसी सेवाएं
ख	8	89	893	-	कारोबार एवं प्रबंधन कंसलटैंसी कार्यकलाप
ग	8	89	894	-	वास्तुशिल्पीय तथा इंजीनियरिंग एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप
घ	8	89	895	-	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 90.07%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 9.93%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 4 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में): 4778 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 1588 लाख

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 4305 लाख

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : दिसम्बर, 2004

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय हैं एवं परियुक्त है।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका को कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स सोमू प्रापर्टीज प्राइवेट लिमिटेड, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स क्लासिक रियल्टी प्राइवेट लिमिटेड, बंगलौर ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स क्लासिक रियल्टी प्राइवेट लिमिटेड, बंगलौर (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकरर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स क्लासिक रियल्टी प्राइवेट लिमिटेड, बंगलौर औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्‌घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 345/2006/फा.सं. 178/68/2005-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4699.—Whereas the Central Government in exercise of the powers conferred by clause(iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999 for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April. 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Classic Realty Private Limited, 41, Vittal Mallya Road, Bangalore, is developing an Industrial Park at Survey No. 12/1 & 12/2, 13/1 to 3, Nyanappa Shetty Palya, J.P. Nagar, Bannerghatta Main Road Bangalore, Karnataka-560001;

And whereas Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/3/2005-IP&ID dated 15-2-2005 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Classic Realty Private Limited, Bangalore, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Classic Realty Private Limited, Bangalore.

1. (i) Name of the Undertaking : Classic Realty Private Limited, Bangalore

(ii) Proposed location : Survey No. 12/1 & 12/2, 13/1 to 3, Nyanappa Shetty Palya, J.P. Nagar, Bannerghatta Main Road Bangalore, Karnataka-560001

(iii) Area of Industrial Park : 77,983.28 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code					
	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	8	89	892	-	Data processing, software development and computer consultancy services.
B	8	89	893	-	Business and management consultancy activites.
C	8	89	894	-	Architectural and engineering and other technical consultancy activities.
D	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.07 %

(vi) Percentage of allocable area earmarked for commercial use : 9.93%

(vii) Minimum number of industrial units : 4 Units

(viii) Total investments proposed (Amount in Rupees) : 4778 lakhs

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 1588 lakhs

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 4305 lakhs

(xi) Proposed date of commencement of the Industrial Park : December, 2004

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S. O. 354(E) dated the 1st April, 2002, shall occupy more than fifty percent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Classic Realty Private Limited, Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80 IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Classic Realty Private Limited, Bangalore, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Classic Realty Private Limited, Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Classic Realty Private Limited, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 345/2006/F.No. 178/68/2005-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4700.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स पैंथियॉन इन्फास्ट्रक्चर प्राइवेट लिमिटेड, लॉजिटैक पार्क मथुरादास वासनजी रोड, अंधेरी (पूर्व), मुम्बई-400 072, में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 26-7-2006 के पत्र सं. 15/29/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स पैंथियॉन इन्फास्ट्रक्चर प्राइवेट लिमिटेड, मुम्बई द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है ।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स पैंथियॉन इन्फास्ट्रक्चर प्राइवेट लिमिटेड, मुम्बई द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स पैंथियॉन इन्फास्ट्रक्चर प्राइवेट लिमिटेड

(ii) प्रस्तावित स्थान : लॉजिटैक पार्क मथुरादास वासनजी रोड, अंधेरी (पूर्व), मुम्बई-400072

(iii) औद्योगिक पार्क का क्षेत्रफल: फेज़ I-19,027 वर्ग मीटर
फेज़ II-86,753 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

एन आई सी संहिता					विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	7	75	-	-	संचार सेवाएं
ख	8	89	892	-	डाटा प्रोसेसिंग साफ्टवेयर विकास एवं कम्प्यूटर कंसलटैंसी सेवाएं
ग	8	89	893	-	कारोबार एवं प्रबंधन कंसलटैंसी कार्यकलाप
घ	8	89	894	-	वास्तुशिल्पीय एवं इंजीनियरिंग एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप
ङ	8	89	895	-	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : फेज़-I-90.40%
फेज़-II-90.10%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : फेज़-I-9.60%
फेज़-II-9.90%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : फेज़-I-5 यूनिटें
फेज़-II-9 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : फेज़-I-3,800/-लाख
फेज़-II-19,000/-लाख

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : फेज़-I-2000/-लाख
फेज़-II-13,100/-लाख

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : फेज़-I-3000,00 लाख
फेज़-II-15,000,00 लाख
जो कि कुल निवेश का 78.95% है ।

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : फेज़-I-मार्च, 2004
फेज़-II-मार्च, 2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित, विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज़, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कॉलम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स पैंथियॉन इन्फास्ट्रक्चर प्राइवेट लिमिटेड, मुम्बई उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस

अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स पैंथियॉन इन्फास्ट्राक्चर प्राइवेट लिमिटेड, मुम्बई ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स पैंथियॉन इन्फास्ट्रक्चर प्राइवेट लिमिटेड, मुम्बई (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है यदि मैसर्स पैंथियॉन इन्फास्ट्रक्चर प्राइवेट लिमिटेड, मुम्बई औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 346/2006/फा.सं. 178/91/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4700.—Whereas the Central Government in exercise of the powers confered by clause(iii) of sub-section(4) of Section 80-IA of the Income-tax Act., 1961(43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the Notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* Number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Pantheon Infrastructure Private Limited, Logitech Park Mathuradas Vasanji Road, Andheri (East), Mumbai-400072, is developing an Industrial Park at Logitech Park Mathuradas Vasanji Road, Andheri (East), Mumbai-400 072;

And whereas Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/29/2005-IP&ID dated 26-7-2006 (as corrected on 4-8-2006) subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking. being developed and being maintained and operated by M/s. Pantheon Infrastructure Private Limited, Mumbai, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Pantheon Infrastructure Private Limited, Mumbai.

1. (i) Name of the Industril Undertaking : Pantheon Infrastructure Private Limited

(ii) Proposed location : Logitech Park Mathuradas Vasanji Road, Andheri (East), Mumbai-400 072.

(iii) Area of Industrial Park : Phase I- 19,027 Sqm. Phase II-86,753 Sqm.

(iv) Proposed activities :

Nature of Industrial activity with NIC code

NIC Code					Description
S.No.	Section	Division	Group	Class	
A	7	75	-	-	Communication services
B	8	89	892	-	Data processing, software development and computer consultancy services.
C	8	89	893	-	Business and management consultancy activites.

Nature of Industrial activity with NIC code

S.No.	NIC Code Section	Division	Group	Class	Description
D	8	89	894	-	Architectural and engineering and other technical consultancy activities.
E	8	89	895	-	Technical testing and analysis services.

(v)	Percentage of allocable area earmarked for Industrial use	: Phase-I-90.40% Phase-II-90.10%
(vi)	Percentage of allocable area earmarked for commercial use	: Phase-I-9.60% Phase-II-9.90%
(vii)	Minimum number of industrial units	: Phase-I-5 units Phase-II-9 units
(viii)	Total investments proposed (Amount in Rupees)	: Phase-I-3,800/- lakhs Phase-II-19.000/- lakhs
(ix)	Investment on built up space for Industrial use (Amount in Rupees)	: Phase-I-2,000/- lakhs Phase-II-13,100/- lakhs
(x)	Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees)	: Phase-I-3,000.00/- lakhs Phase-II-15,000.00/- lakhs that is 78.95% of the total investment.
(xi)	Proposed date of commencement of the Industrial Park	: Phase-I-March, 2004 Phase-II-March, 2005

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of Paragraph 6 of S. O. 354(E) dated the 1st April, 2002, shall occupy more than fifty percent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Pantheon Infrastructure Private Limited, Mumbai, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Pantheon Infrastructure Private Limited, Mumbai, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Pantheon Infrastructure Private Limited, Mumbai, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Pantheon Infrastructure Private Limited, Mumbai fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 346/2006/F. No. 178/91/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4701.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) दिनांक 1 अप्रैल, 2002 के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड जिसका रजिस्टर्ड कार्यालय 17, हेमकुँट कॉलोनी, नेहरू प्लेस के सामने, नई दिल्ली-110 048 है, प्लॉट सं. 15 और 16, सैक्टर 16-ए, नौएडा, जिला-नौएडा, उत्तर प्रदेश-201 301 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 26-9-2006 के पत्र सं. 15/161/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

अब, इसलिए, उक्त अधिनियम की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड, नौएडा द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड, नई दिल्ली द्वारा औद्योगिक पार्क गठित जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड

(ii) प्रस्तावित स्थान : प्लॉट सं. 15 और 16, सैक्टर 16-ए, नौएडा, जिला-नौएडा, उत्तर प्रदेश-201 301

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 26,130.91 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप					
एन आई सी संहिता					विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	7	75	-	-	संचार सेवाएं
ख	8	89	892	-	डाटा प्रोसेसिंग साफ्टवेयर डेवलपमेंट एवं कम्प्यूटर कन्सल्टेन्सी सेवाएं
ग	8	89	893	-	व्यापार एवं प्रबधन कन्सल्टेन्सी गतिविधियां
घ	8	89	894	-	वास्तुकला एवं इनजीनियरिंग एवं अन्य तकनीकी कन्सल्टेन्सी गतिविधियां
ङ	8	89	895	-	तकनीकी प्रयोग एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 90.00%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 10.00%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 04 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 43.00 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 28.72 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 37.50 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की : अप्रैल, 2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. अब संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क,

विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50 से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1(vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड, नई दिल्ली उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1(i) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा 4(ii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड, नई दिल्ली ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड, नई दिल्ली (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स इंडियन एक्सप्रैस मल्टीमीडिया लिमिटेड, नई दिल्ली किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 347/2006/फा. सं. 178/122/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4701.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O. 193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Indian Express Multimedia Limited, having registered office at 17, Hemkunt Colony, Opposite Nehru Place, New Delhi-110 048, is developing on Industrial Park, at Plot No. 15 & 16, Sector 16-A, Noida, District-Noida, Uttar Pradesh-201 301;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/161/2005-IP&ID dated 26-09-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Indian Express Multimedia Limited, Noida, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Indian Express Multimedia Limited, New Delhi

1. (i) Name of the Industrial Undertaking : Indian Express Multimedia Limited

(ii) Proposed location : Plot No. 15 & 16, Sector 16-A, NOIDA, District-NOIDA, Uttar Pradesh-201 301

(iii) Area of Industrial : 26,130.99 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code

S.No.	NIC Code Section	Division	Group	Class	Description
A	7	75	-	-	Communication Services.
B	8	89	892	-	Data processing, Software development and computer consultancy services.
C	8	89	893	-	Business and management consultancy activities.
D	8	89	894	-	Architectural and engineering and other technical consultancy activities.
E	8	89	985	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.00 %

(vi) Percentage of allocable area earmarked for commercial use : 10.00 %

(vii) Minimum number of industrial units : 04 Units

(viii) Total investments proposed (Amount in Rupees) : 43.00 crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 28.72 crores

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 37.50 crores

(xi) Proposed date of commencement of the Industrial Park : April, 2005

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of this Notification, are located in the Industrial Park.

7. M/s. Indian Express Multimedia Limited, New Delhi, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Indian Express Multimedia Limited, New Delhi, shall be solely responsible for any repercussions of such invalidity, if :

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Indian Express Multimedia Limited, New Delhi, transfers the operation and maintenance of the industrial park (*i.e.*, transferor undertaking) to another undertaking (*i.e.*, the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Indian Express Multimedia Limited, New Delh, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 347/2006 /F.No. 178/122/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4702.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स मुरली रिऐल्टर्स प्राइवेट लिमिटेड जिसका पंजीकृत कार्यालय मंत्री हाउस, 929, प्रथम मॉजिल, एफ सी रोड, पुणे-411 004, सी टी एस सं. 18, 18/1 ढोल पाटिल रोड, बंद गाईन, पुणे-411 004 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-9-2006 के पत्र सं. 15/21/2006-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब, उक्त अधिनियम की धारा 80झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स मुरली रिऐल्टर्स प्राइवेट लिमिटेड, पुणे द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मुरली रिऐल्टर्स प्राइवेट लिमिटेड, पुणे द्वारा औद्योगिक पार्क गठित किये जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम	:	मुरली रिऐल्टर्स प्राइवेट लिमिटेड
(ii) प्रस्तावित स्थान	:	सी टी एस सं. 18, 18/1, ढोल पाटिल रोड, बंद गार्डन, पुणे-411 001
(iii) औद्योगिक पार्क का क्षेत्रफल	:	35,433.00 वर्ग मीटर
(iv) प्रस्तावित कार्यकलाप		

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

क्रम सं.	एन आई सी संहिता अनुभाग	प्रभाग	समूह	श्रेणी	विवरण
क	7	75	–	–	संचार सेवाएं
ख	8	89	892	–	डाटा प्रोसेसिंग, साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
ग	8	89	893	–	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
घ	8	89	894	–	वास्तुशिल्पीय तथा इंजीनियरी एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत	:	90.07%
(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत	:	09.93%
(vii) औद्योगिक यूनिटों की न्यूनतम संख्या	:	03 यूनिटें
(viii) प्रस्तावित कुल निवेश (राशि रुपए में)	:	46.00 करोड़
(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में)	:	20.00 करोड़
(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में)	:	40.00 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : मार्च, 2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका को कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों, जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1(vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स मुरली रिऐल्टर्स प्राइवेट लिमिटेड, पुणे उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1(xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा 4(iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स मुरली रिऐल्टर्स प्राइवेट लिमिटेड, पुणे ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा यदि :

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स मुरली रिऐल्टर्स प्राइवेट लिमिटेड, पुणे (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है मैसर्स मुरली रिऐल्टर्स प्राइवेट लिमिटेड, पुणे औद्योगिक पार्क, स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 348/2006/फा.सं. 178/121/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 15th November, 2006

(INCOME-TAX)

S.O. 4702.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section(4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act, has framed and notified a scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Murli Realtors Private Limited, having registered office at Mantri House, 929, First Floor, F. C. Road, Pune-411 004, is developing an Industrial Park at CTS No. 18, 18/1 Dhole Patil Road, Bund Garden, Pune-411001;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/12006/2005-IP&ID dated 25-09-2006

subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Murli Realtors Private Limited, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Murli Realtors Private Limited, Pune :

1. (i) Name of the Industrial Undertaking : Murli Realtors Private Limited

(ii) Proposed location : CTS No. 18, 18/1, Dhole Patil Road, Bund Garden, Pune-411001.

(iii) Area of Industrial Park : 35,433.00 Square Meters

(iv) Proposed activities :

Nature of Industrial activity with NIC Code

S.No.	NIC Code Section	Division	Group	Class	Description
A	7	75	-	—	Communication Services.
B	8	89	892	—	Data processing, Software development and computer consultancy services.
C	8	89	893	—	Business and management consultancy activites.
D	8	89	894	—	Architectural and engineering and other technical consultancy activities.

(v) Percentage of allocable area earmarked for Industrial use : 90.07 %

(vi) Percentage of allocable area earmarked for commercial use : 09.93 %

(vii) Minimum number of industrial units : 03 Units

(viii) Total investments proposed (Amount in Rupees) : 46.00 crores

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 20.00 crores

(x) Investment on Infrastructure Development including investment on built-up space for Industrial use (Amount in Rupees) : 40.00 crores

(xi) Proposed date of commencement of the Industrial Park : March, 2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for Industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than 50% of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more State or Central-Tax -laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of this Notification, are located in the Industrial Park.

7. M/s. Murli Realtors Private Limited, Pune, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1(xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Murli

Realtors Private Limited, Pune shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Murli Realtors Private Limited, Pune, transfers the operation and maintenance of the Industrial Park (*i.e.*, transferor undertaking) to another undertaking (*i.e.*, the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Murli Realtors Private Limited, Pune, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the Industrial Park.

[Notification No. 348/2006/F.No. 178/121/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4703.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80झक की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड, हैप्पी होम, प्रथम मंजिल, 244, वाटरफील्ड रोड, बांद्रा (पश्चिम), मुम्बई-400 050, सिटी सर्वे सं. 779, मकवाना रोड, मारोल ग्राम, तालुका-मारोल, जिला-अंधेरी, मुम्बई, महाराष्ट्र-400 059 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 26-7-2006 के पत्र सं. 15/207/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

इसलिए, अब, उक्त अधिनियम की धारा 80झक की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स वर्षा ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड, मुम्बई द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स वर्षा ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड, मुम्बई द्वारा औद्योगिक पार्क गठित जाने हेतु अनुमोदन प्रदान किया है ।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स वर्षा ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड

(ii) प्रस्तावित स्थान : सिटी सर्वे सं. 779, मकवाना रोड, मारोल ग्राम, तालुका-मारोल, जिला-अंधेरी, मुम्बई, महाराष्ट्र-400 059

(iii) औद्योगिक पार्क का : 17,216.45 वर्ग मीटर क्षेत्रफल

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

क्रम सं.	एन आई सी संहिता अनुभाग	प्रभाग	समूह	श्रेणी	विवरण
क	7	75	–	–	संचार सेवाएं
ख	8	89	892	–	डाटा प्रोसेसिंग साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
ग	8	89	893	–	कारेबार तथा प्रबंधन कंसलटैंसी कार्यकलाप
घ	8	89	894	–	वास्तुशिल्पीय तथा इंजीनियरी एवं अन्य तकनीकी कंसलटैंसी कार्यकलाप
ङ	8	89	895	–	तकनीकी परीक्षण एवं विश्लेषण सेवाएं

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 90.43%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 9.57%

(vii)	औद्योगिक यूनिटों की न्यूनतम संख्या	:	03 यूनिटें
(viii)	प्रस्तावित कुल निवेश (राशि रुपए में)	:	2000 लाख
(ix)	औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में)	:	1200 लाख
(x)	अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में)	:	1900 लाख
(xi)	औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि	:	मार्च, 2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1(vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स वर्षा ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड, मुम्बई उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80झक की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1(xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80झक की उपधारा 4(iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध रहेगा और मैसर्स वर्षा ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड, मुम्बई ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स वर्षा ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड, मुम्बई (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है यदि मैसर्स ऋतु कंस्ट्रक्शन्स प्राइवेट लिमिटेड, मुम्बई औद्योगिक पार्क, स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 349/2006/फा.सं. 178/108/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4703.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43

of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E), dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Varsha Ritu Constructions Private Limited, Happy Home, 1st Floor, 244, Waterfield Road, Bandra (West), Mumbai-400 050, is developing an Industrial Park at City Survey No. 779, Makwana Road, Marol-Village Taluka-Marol, District-Andheri, Mumbai, Maharashtra-400 059;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/207/2005-IP&ID dated 26-7-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-1A of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Varsha Ritu Constructions Private Limited, Mumbai, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Varsha Ritu Constructions Private Limited, Mumbai.

1. (i) Name of the Industrial Undertaking : Varsha Ritu Constructions Private Limited

(ii) Proposed location : City Survey No. 779, Makwana Road, Marol-Village, Taluka-Marol, District-Andheri, Mumbai, Maharashtra-400 059.

(iii) Area of Industrial Park : 17,216.45 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC Code

S.No.	NIC Code Section	Division	Group	Class	Description
A	7	75	-	-	Communication Services.
B	8	89	892	-	Data Processing, Software Development and computer consultancy services.
C	8	89	893	-	Business and management consultancy activites.
D	8	89	894	-	Architectural and engineering and other technical consultancy activities.
E	8	89	895	-	Technical testing and analysis services.

(v) Percentage of allocable area earmarked for Industrial use : 90.43 %

(vi) Percentage of allocable area earmarked for commercial use : 9.57 %

(vii) Minimum number of industrial units : 03 Units

(viii) Total investments proposed (Amount in Rupees) : 2000 lakhs

(ix) Investment on built up space for Industrial use (Amount in Rupees) : 1200 lakhs

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 1900 lakhs

(xi) Proposed date of commencement of the Industrial Park : March, 2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E), dated the 1st April, 2002, shall occupy more than fifty

per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more State or Central Tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of this Notification, are located in the Industrial Park.

7. M/s. Varsha Ritu Constructions Private Limited, Mumbai, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of Sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1(xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under Sub-section 4(iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Varshe Ritu Constructions, Pvt. Ltd. Mumbai shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Varsha Ritu Constructions Private Limited, Mumbai, transfers the operation and maintenance of the industrial park (*i.e.*, transferor undertaking) to another undertaking (*i.e.*, the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Varsha Ritu Constructions Private Limited, Mumbai, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 349/2006/F.No. 178/108/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4704.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ), दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ), दिनांक 1 अप्रैल, 2002 के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड, जिसका पंजीकृत कार्यालय उद्योग भवन, तिलक मार्ग, जयपुर-302005 में है, मत्स्य इंडस्ट्रियल एरिया एक्सटेंशन (नॉर्थ एंड साऊथ), अलवर राजस्थान-301001 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 25-04-2006 के पत्र सं. 15/204/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

अब, इसलिए, उक्त अधिनियम की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड, जयपुर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड जयपुर, द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम	:	राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड,
(ii) प्रस्तावित स्थान	:	मत्स्य इंडस्ट्रियल एरिया एक्सटेंशन (नॉर्थ एंड साऊथ), अलवर राजस्थान-301001

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 499.90 एकड़

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप				
एन आई सी संहिता				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी
क	2 एवं 3	–	–	– विनिर्माण

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 99.40%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 0.60%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 30 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 2577.29 लाख

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : शून्य

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 1977.29 लाख

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 31-03-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. अब संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप-पैराग्राफ (ख) में निर्दिष्ट तालिका को कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड जयपुर, उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) के खंड (ii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (x) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड जयपुर, ऐसी किसी की अवैधता प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड, जयपुर (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डवलपमेन्ट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड, जयपुर किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 350/2006/फा.सं. 178/93/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4704.—Whereas the Central Government in exercise of the powers conferre by clause (iii) of sub-section (4) of Section 80-1A of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O. 193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E), dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Rajasthan State Industrial Development & Investment Corporation Limited, having registered office at Udyog Bhawan, Tilak Marg, Jaipur-302005 is developing on Industrial Park at Matsya Industrial Area Extension (North & South), Alwar, Rajasthan-301 001;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/204/2005-IP&ID, dated 25-4-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur.

1. (i) Name of the Industrial Undertaking : Rajasthan State Industrial Development & Investment Corporation Limited

(ii) Proposed location : Matsya Industrial Area Extension (North & South), Alwar, Rajasthan-301 001

(iii) Area of Industrial Park : 499.90 Acres

(iv) Proposed activities

Nature of Industrial activity with NIC Code					
	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	2 & 3	—	—	—	Manufacturing

(v) Percentage of allocable area earmarked for Industrial use : 99.40%

(vi) Percentage of allocable area earmarked for commercial use : 0.60%

(vii) Minimum number of industrial units : 30 Units

(viii) Total investments proposed (Amount in Rupees) : 2577.29 lakhs

(ix) Investment on built up space for Industrial use (Amount in Rupees) : Nil

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 1977.29 lakhs

(xi) Proposed date of commencement of the Industrial Park : 31-03-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E), dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct

entity for the purpose or one and more State or Central-Tax Laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of this Notification, are located in the Industrial Park.

7. M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1(xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-IA of the Income-tax Act, 1961.

9. The approval will be invalid and M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, transfers the operation and maintenance of the industrial park (*i.e.*, transferor undertaking) to another undertaking (*i.e.*, the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the Industrial Park.

[Notification No. 350/2006 /F.No. 178/93/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4705.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ), दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ), दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स मद्दी लक्ष्मैया एंड कं. लि., चिराला रोड़ चिलाकलूरीपेटा- 522 616, गुन्टूर, टी टी सी औद्योगिक क्षेत्र, मिलेनियम बिजनेस पार्क, महाराष्ट्र औद्योगिक विकास निगम, नवी मुम्बई, महाराष्ट्र-400 705 में "एम एल टावर्स" नामक एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 31-12-2004 के पत्र सं. 15/34/2004-आई पी एंड आई डी के तहत उक्त औद्योगिक पार्क को अनुमोदित किया है;

अब इसलिए, उक्त अधिनियम की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (ii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स मद्दी लक्ष्मैया एंड कं. लि., द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स मद्दी लक्ष्मैया एंड कं. लि, गुन्टूर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक विकास एवं निवेश का नाम	:	मद्दी लक्ष्मैया एंड कं. लिमिटेड, आंध्र प्रदेश
(ii) प्रस्तावित स्थान	:	एम एल टावर्स, टी टी सी औद्योगिक क्षेत्र, मिलेनियम बिजनेस पार्क, महाराष्ट्र औद्योगिक विकास निगम, नवी मुम्बई, महाराष्ट्र-400 705

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 22,231 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

	एन आई सी संहिता				विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	8	89	892	–	डाटा प्रोसेसिंग साफ्टवेयर डवपलमेंट एवं कम्प्यूटर कन्सल्टेन्सी सेवाएं
ख	8	89	893	–	व्यापार एवं प्रबधन कन्सल्टेन्सी गतिविधियां
ग	8	89	894	–	वास्तुकला एवं इजीनियरिंग एवं अन्य तकनीकी कन्सल्टेन्सी गतिविधियां

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 90.50%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 9.50%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 3 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 61.55 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 56.53 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 61.55 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : दिसम्बर, 2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. अवसंरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय हैं एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स मद्दी लक्ष्मैया एंड कं. लिमिटेड, गुन्टुर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (x) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स मद्दी लक्ष्मैया एंड कं. लिमिटेड, गुन्टुर ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स मद्दी लक्ष्मैया एंड कं. लिमिटेड, गुन्टुर (अर्थात अन्तरणकर्ता उपकम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 को उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स मद्दी लक्ष्मैया एंड कं. लिमिटेड, गुन्टुर किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 351/2006/फा.सं. 178/17/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4705.—Whereas the Central Government in exercise of the powers conferre by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act. 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park. by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E), dated the 1st day of April, 2002, for the period beginning on the Ist day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Maddi Lakshmaiah & Co. Limited, Chirala Road, Chilakaluripeta-522 616, Guntur, is developing on Industrial Park, namely "ML towers" at TTC Industrial Area, Millennium Business Park, Maharashtra Industrial Development Corporation, Navi Mumbai, Maharashtra-400 705;

And whereas the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/34/2004-IP&ID dated 31-12-2004 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Maddi Lakshmaiah & Co. Limited, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Maddi Lakshmaiah & Co. Limited, Guntur.

1. (i) Name of the Industrial Undertaking : Maddi Lakshmaiah & Co. Limited, Andhra Pradesh

   (ii) Proposed location : ML Towers, TTC Industrial Area, Millennium Business Park, Maharashtra Industrial Development Corporation, Navi Mumbai, Maharashtra- 400 705

   (iii) Area of Industrial Park : 22,231 Square Meters

   (iv) Proposed activities

Nature of Industrial activity with NIC code

S.No.	NIC Code Section	Division	Group	Class	Description
A	8	89	892	—	Data Processing, Software Development and Computer consultancy services.
B	8	89	893	—	Business and management consultancy services.
C	8	89	894	—	Architectural and engineering and other technical consultancy activities.

   (v) Percentage of allocable area earmarked for Industrial use : 90.50 %

   (vi) Percentage of allocable area earmarked for commercial use : 9.50 %

   (vii) Minimum number of industrial units : 3 Units

   (viii) Total investments proposed (Amount in Rupees) : 61.55 crores

   (ix) Investment on built up space for Industrial use (Amount in Rupees) : 56.53 crores

   (x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 61.55 crores

   (xi) Proposed date of commencement of the Industrial Park : December, 2004

2. The minimum investment on infrastructure

development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of this Notification, are located in the Industrial Park.

7. M/s. Maddi Lakshmaiah & Co. Limited, Guntur. shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-1A of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4 (iii) of Section 80-IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Maddi Lakshmaiah & Co. Limited, Guntur, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Maddi Lakshmaiah & Co. Limited, Guntur, transfers the operation and maintenance of the industrial park (*i.e.*, transferor undertaking) to another undertaking (*i.e.*, the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Maddi Lakshmaiah & Co. Limited, Guntur, fails to comply with any of the conditions.

12. Any *amendment* of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 351/2006 /F.No. 178/17/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 17 नवम्बर, 2006

(आयकर)

का.आ. 4706.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (जिसे बाद में उक्त अधिनियम कहा गया है) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स इंफिनिटी इन्फोटेक पार्क्स लिमिटेड, प्लॉट ए-3, ब्लॉक जी पी, सेक्टर-V, साल्ट लेक इलेक्ट्रानिक्स काम्प्लैक्स, कोलकाता-700 091, प्लॉट नम्बर ए-3, ब्लॉक जी पी, सैक्टर-V, साल्ट लेक इलेक्ट्रानिक्स काम्प्लैक्स, नार्थ 24 परगना, पश्चिम बंगाल-700 091 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने उक्त औद्योगिक पार्क को संख्या का.आ. 3472 के अन्तर्गत दिनांक 2 सितम्बर, 2006 की अधिसूचना के अनुबंध में विनिर्दिष्ट शर्तों के अनुसार अनुमोदित कर दिया है;

और जबकि , उक्त अधिनियम की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने उक्त खंड के प्रयोजनार्थ एक औद्योगिक पार्क के रूप में मैसर्स इनफिनिटी इनफोटेक पार्क्स लिमिटेड, कोलकाता द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित किया है ;

और जबकि, संख्या का.आ. 3472 के अन्तर्गत दिनांक 2 सितम्बर, 2006 को भारत के राजपत्र, भाग-II, खंड 3(ii) में प्रकाशित पूर्ववर्ती अधिसूचना का अधिक्रमण करते हुए केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अनुसार वाणिज्य एवं उद्योग मंत्रालय के दिनांक 25-09-2006 के पत्र सं. 15/09/2006-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क को अनुमोदित कर दिया है।

इसलिए, अब उक्त अधिनियम की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स इनफिनिटी इन्फोटैक पार्क्स लिमिटेड, कोलकाता द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स इनफिनिटी इन्फोटैक पार्क्स लिमिटेड, कोलकाता द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया गया है ।

1. (i) औद्योगिक उपक्रम का नाम : मैसर्स इनफिनिटी इन्फोटैक पार्क्स लिमिटेड

(ii) प्रस्तावित स्थान : प्लॉट सं. ए-3, ब्लॉक-जीपी, सैक्टर-V, सॉल्ट लेक इलेक्ट्रॉनिक्स कॉम्प्लैक्स, नॉर्थ 24 परगनाज़, प. बंगाल-700 091

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 33,014.84 वर्ग मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

एन आई सी संहिता					विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	3	36	367	–	कम्प्यूटर्स एवं कम्प्यूटर बेस्ड सिस्टम्स के विनिर्माता
ख	7	75	752	–	दूरसंचार सेवाएं
ग	8	89	892	–	डाटा प्रोसेसिंग, साफ्टवेयर विकास तथा कम्प्यूटर कंसलटैंसी सेवाएं
घ	8	89	893	–	कारोबार तथा प्रबंधन कंसलटैंसी कार्यकलाप

(v) औद्योगिक उपयोग के लिए निर्धारित आबंटनीय क्षेत्र का प्रतिशत : 92.00%

(vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 08.00%

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 15 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 72.36 करोड़

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 52.30 करोड़

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 71.95 करोड़

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 31-12-2004

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम. नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं ।

4. दिनांक 1 अप्रैल, 2002 की संख्या का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों, जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिज़र्व बैंक अथवा उस समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश के लिए अनुमोदन शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा ।

6. इस अधिसूचना के पैरा 1(vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स इनफिनिटी इन्फोटैक पार्क्स लिमिटेड, कोलकाता उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस

अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (ii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुतोदन अवैध रहेगा और मैसर्स इनफिनिटी इनफोटेक पार्क्स लिमिटेड, कोलकाता ऐसी किसी प्रतिक्रिया की अवैधता के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है ।

10. यदि मैसर्स इनफिनिटी इनफोटेक पार्क्स लिमिटेड, कोलकाता (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को ले सकती है यदि मैसर्स इनफिनिटी इनफोटेक पार्क्स लिमिटेड, कोलकाता औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगाना अथवा किसी ठोस तथ्य का उद्‌घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 352/2006/फा.सं. 178/81/2005-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 17th November, 2006

(INCOME-TAX)

S.O. 4706.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for Industrial Park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Infinity Infotech Parks Limited, Plot A3, Block GP, Sector V, Salt Lake Electronics Complex, Kolkata 700091, is developing an Industrial Park, at Plot No. A-3, Block-GP, Sector-V, Salt Lake Electronics Complex, North 24 Parganas, West Bengal-700 091;

And whereas the Central Government had approved the said Industrial Park subject to terms and conditions specified in the annexure to the notification dated 2nd September, 2006 vide number S.O. 3472;

And whereas, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government had notified the undertaking, being developed and being maintained and operated by M/s. Infinity Infotech Parks Limited, Kolkata as an Industrial Park for the purposes of the said clause;

And whereas in supersession of earlier notification published in Gazette of India Part II, Section 3(ii) dated 2nd September, 2006 *vide* number S.O. 3472, the Central Government has approved the said Industrial Park *vide* Ministry of Commerce and Industry letter No. 15/90/2006-IP&ID dated 25-9-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Infinity Infotech Parks Limited, Kolkata, as an Industrial Park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an Industrial Park by M/s. Infinity Infotech Parks Limited, Kolkata.

1.	(i) Name of the Industrial Undertaking	:	Infinity Infotech Parks Limited.
	(ii) Proposed location	:	Plot No. A-3, Block,GP, Sector-V, Salt Lake Electronics Complex, North 24 Parganas, West Bengal-700 091
	(iii) Area of Industrial Park	:	33,014.84 Square Meters

(iv) Proposed activities

Nature of Industrial activity with NIC code					
	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	3	36	367	-	Manufacture of Computers & Computer based systems.
B	7	75	752	-	Telephone communication services.
C	8	89	892	-	Data processing, software development and computer consultancy services.
D	8	89	893	-	Business and management consultancy activities.

(v)	Percentage of allocable area earmarked for Industrial use	: 92.00 %
(vi)	Percentage of allocable area earmarked for commercial use	: 08.00 %
(vii)	Minimum number of industrial units	: 15 Units
(viii)	Total investments proposed (Amount in Rupees)	: 72.36 crores
(ix)	Investment on built up space for Industrial use (Amount in Rupees)	: 52.30 crores
(x)	Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees)	: 71.95 crores
(xi)	Proposed date of commencement of the Industrial Park	: 31-12-2004

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of this Notification, are located in the Industrial Park.

7. M/s. Infinity Infotech Parks Limited, Kolkata, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Infinity Infotech Parks Limited, Kolkata, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Infinity Infotech Parks Limited, Kolkata, transfers the operation and maintenance of the Industrial Park (*i.e.*, transferor undertaking) to another undertaking (*i.e.*, the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits, under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Infinity Infotech Parks Limited, Kolkata, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the Industrial Park.

[Notification No. 352/2006/F.No. 178/81/2005-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 30 नवम्बर, 2006

(आयकर)

का.आ. 4707.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354 (अ) दिनांक 1 अप्रैल, 2002 के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड जिसका पंजीकृत कार्यालय उद्योग भवन, तिलक मार्ग, जयपुर-302005 में है, आई आई डी सेंटर, वनस्थली रोड, नेवाई, जिला-टोंक, राजस्थान-304 021 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखत शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 4-5-2006 के पत्र सं. 15/94/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क को अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

1. (i)	औद्योगिक उपक्रम का नाम	: राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड
(ii)	प्रस्तावित स्थान	: आई आई डी सेंटर, वनस्थली रोड, नेवाई, ज़िला-टोंक, राजस्थान-304 021
(iii)	औद्योगिक पार्क का कुल क्षेत्रफल	: 155. 44 एकड़
(iv)	प्रस्तावित कार्यकलाप	

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

एन आई सी संहिता						विवरण
क्रम सं.	अनुभाग	प्रभाग	समूह		श्रेणी	
क	2 एंड 3	-	-	-		विनिर्माण कार्यकलाप

(v)	औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत	: 93.38%
(vi)	वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत	: 6.62%
(vii)	औद्योगिक यूनिटों की न्यूनतम संख्या	: 49 यूनिटें
(viii)	प्रस्तावित कुल निवेश (राशि रुपए में)	: 6, 23,53,000
(ix)	औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में)	: शून्य
(x)	अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में)	: 5, 28,71,000
(xi)	औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि	: 31-03-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. अवसंरचना विकास में सड़क (सम्पर्क सड़क सहित) जलापूर्ति तथा सीवरेज़, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो

औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय है एवं वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354 (अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका को कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश शामिल भी है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा ।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स राजस्थान इस्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर ऐसी किसी अवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड, जयपुर (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकरर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसमें इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इनवेस्टमेंट कारपोरेशन लिमिटेड, जयपुर किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 362/2006/फा.सं. 178/96/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 30th November, 2006

(INCOME-TAX)

S.O. 4707.—Whereas the Central Government in exercise of the powers conferre by clause(iii) of sub-section(4) of Section 80-IA of the Income-tax Act. 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002 for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Rajasthan State Industrial Development & Investment Corporation Limited, having registered office at Udyog Bhawan, Tilak Marg, Jaipur-302005 is developing an Industrial Park at IID Centre, Vansthali Road, Newdi, District-Tonk, Rajasthan-304 021;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/94/2005-IP&ID dated 4-5-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur.

1. (i) Name of the Industrial Undertaking, : Rajasthan State Industrial Development & Investment Corporation Limited

(ii) Proposed location : IID Centre Vansthali Road Newai, District-Tonk, Rajasthan-304 021

(iii) Area of Industrial Park : 155.44 Acres

(iv) Proposed activities

Nature of Industrial activity with NIC code					
	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	2 & 3	-	-	-	Manufacturing

(v) Percentage of allocable area earmarked for Industrial use : 93.38 %

(vi) Percentage of allocable area earmarked for commercial use : 6.62 %

(vii) Minimum number of industrial units : 49 Units

(viii) Total investments proposed (Amount in Rupees) : 6,23,53,000

(ix) Investment on built up space for Industrial use (Amount in Rupees) : Nil

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 5,28,71,000

(xi) Proposed date of commencement of the Industrial Park : 31-03-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty percent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80-A of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4(iii) of Section 80-A of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the Industrial Park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, transfers the operation and maintenance of the industrial

park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the Industrial Park.

[Notification No. 362/2006/F.No. 178/96/2006-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 30 नवम्बर, 2006

(आयकर)

का.आ. 4708.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च 2002 को समाप्त होने वाली अवधि के लिये संख्या का.आ. 193(अ) दिनांक 30 मार्च, 1999 के ज़रिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354 (अ) दिनांक 1 अप्रैल, 2002 के ज़रिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड जिसका पंजीकृत कार्यालय उद्योग भवन, तिलक मार्ग, जयपुर-302005 में है, इंडस्ट्रियल एरिया बस्सी एक्स्टेंशन, बस्सी, ज़िला-जयपुर, राजस्थान में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखत शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 24-4-2006 के पत्र सं. 15/188/2005-आई पी एंड आई डी के अन्तर्गत उक्त औद्योगिक पार्क को अनुमोदित किया है;

इसलिए, अब उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

नियम एवं शर्तें जिन पर भारत सरकार ने मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

1. (i) औद्योगिक उपक्रम का नाम : राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड

(ii) प्रस्तावित स्थान : इंडस्ट्रियल एरिया बस्सी एक्स्टेंशन, ज़िला-जयपुर, राजस्थान,

(iii) औद्योगिक पार्क का कुल क्षेत्रफल : 90.17 एकड़

(iv) प्रस्तावित कार्यकलाप

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप		
एन आई सी संहित		विवरण
क्रम सं. अनुभाग प्रभाग समूह श्रेणी		
क 2 एंड 3 - - -		विनिर्माण कार्यकलाप

(v) औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत : 100%

(vi) वाणिज्यक उपयोग के लिए निर्धारित भूमि का प्रतिशत : शून्य

(vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 39 यूनिटें

(viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 422.60 लाख

(ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : शून्य

(x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 298.83 लाख

(xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 31-03-2006

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा । ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा ।

3. अब संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो निर्धारणीय है एवं जो वाणिज्यिक दृष्टि से उपलब्ध कराई जाती हैं ।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354 (अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका को कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी । इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है ।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अंतर्गत विनिर्दिष्ट किसी प्राधिकरण द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश भी शामिल है, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा ।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं ।

7. मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उप-धारा (4) (iii) के अन्तर्गत लाभ लिए जाने हैं ।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होगा तो आयकर अधिनियम, 1961 की धारा 80झ क की उप-धारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा ।

9. यह अनुमोदन अवैध रहेगा और मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर ऐसी किसीअवैधता की प्रतिक्रिया के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/त्रुटिपूर्ण सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो ।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु हो जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया हो ।

10. यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कारपोरेशन लिमिटेड, जयपुर (अर्थात अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट को संयुक्त रूप से सूचित करेंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं । केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स राजस्थान स्टेट इंडस्ट्रियल डेवलपमेंट एंड इन्वेस्टमेंट कार्पोरेशन लिमिटेड, जयपुर किसी भी शर्त के अनुपालन में असफल रहता है ।

12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देना ।

[अधिसूचना सं. 363/2006/फा.सं. 178/99/2006-आ.क.नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 30th November, 2006

(INCOME-TAX)

S.O. 4708.—Whereas the Central Government in exercise of the powers conferred by clause(iii) of Sub-section(4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) *vide* number S.O.193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and *vide* number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Rajasthan State Industrial Development & Investment Corporation Limited, having registered office at Udyog Bhawan, Tilak Marg, Jaipur-302005 is developing an Industrial Park at Industrial Area Bassi Extension, Bassi, District-Jaipur, Rajasthan;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/188/2005-IP&ID dated 24-4-2006 subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of Sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and

operated by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur.

1. (i) Name of the Industrial Undertaking, : Rajasthan State Industrial Development & Investment Corporation Limited

(ii) Proposed location : Industrial Area Bassi Extension, Bassi, District-Jaipur, Rajasthan

(iii) Area of Industrial Park : 90.17 Acres

(iv) Proposed activities

Nature of Industrial activity with NIC code					
	NIC Code				Description
S.No.	Section	Division	Group	Class	
A	2 & 3	-	-	-	Manufacturing

(v) Percentage of allocable area earmarked for Industrial use : 100 %

(vi) Percentage of allocable area earmarked for commercial use : Nil

(vii) Minimum number of industrial units : 39 Units

(viii) Total investments proposed (Amount in Rupees) : 422.60 lakhs

(ix) Investment on built up space for Industrial use (Amount in Rupees) : Nil

(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 298.83 lakhs

(xi) Proposed date of commencement of the Industrial Park : 31-03-2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose or one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of Sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under Sub-section 4(iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur,

transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 363/2006/F.No. 178/99/2006-ITA-I]

DEEPAK GARG, Under Secy.

(आर्थिक कार्य विभाग)

(वित्तीय क्षेत्र प्रभाग)

(बीमा विंग)

नई दिल्ली, 29 नवम्बर, 2006

का.आ. 4709.—केन्द्रीय सरकार, बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्द्वारा श्री जी. प्रभाकर, अंचल प्रबंधक (प्रभारी), भारतीय जीवन बीमा निगम, चेन्नई, को कार्यभार ग्रहण करने की तारीख से 5 वर्षों की अवधि के लिए या 62 वर्ष की आयु प्राप्त करने तक, जो भी पहले हो, अथवा अगले आदेशों तक उक्त प्राधिकरण में पूर्णकालिक सदस्य (जीवन) के रूप में नियुक्त करती है ।

[फा. सं. 15011/1/2006-बीमा-III]

वी.पी. भारद्वाज, निदेशक

(Department of Economic Affairs)

(Financial Sector Division)

(Insurance Wing)

New Delhi, the 29th November, 2006

S.O. 4709.—In exercise of the powers conferred by Section 4 of the Insurance Regulatory & Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoint Shri G. Prabhakara, Zonal Manager (I/C), Life Insurance Corporation of India, Chennai, as whole-time Member (Life) of the said Authority for a period of 5 years from the date of assumption of the charge or till he attains the age of 62 years, whichever is earlier or until further orders.

[F. No. 15011/1/2006-Ins. III]

V.P. BHARDWAJ, Director

नई दिल्ली, 29 नवम्बर, 2006

का.आ. 4710.—केन्द्रीय सरकार, बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्द्वारा श्री आर. कण्णन, प्रधान सलाहकार, भारतीय रिजर्व बैंक, मुम्बई, को कार्यभार ग्रहण करने की तारीख से 5 वर्षों की अवधि के लिए या 62 वर्ष की आयु प्राप्त करने तक, जो भी पहले हो, अथवा अगले आदेशों तक उक्त प्राधिकरण में पूर्णकालिक सदस्य (बीमांकक) के रूप में नियुक्त करती है ।

[फा. सं. 15011/2/2006-बीमा-III]

वी.पी. भारद्वाज, निदेशक

New Delhi, the 29th November, 2006

S.O. 4710.—In exercise of the powers conferred by Section 4 of the Insurance Regulatory & Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoint Shri R. Kannan, Principal Advisor, Reserve Bank of India, Mumbai, as whole-time Member (Actuary) of the said Authority for a period of 5 years from the date of assumption of the charge or till he attains the age of 62 years, whichever is earlier or until further orders.

[F. No. 15011/2/2006-Ins. III]

V.P. BHARDWAJ, Director

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 20 नवम्बर, 2006

का.आ. 4711.—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के वाणिज्य मंत्रालय, (वाणिज्य विभाग) की अधिसूचना सं. का.आ. 2744, तारीख 2 जुलाई, 1983 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना से संलग्न सारणी के स्तंभ (1) में, "विशेष कार्य अधिकारी (प्रशासन)" शब्दों और कोष्ठकों के स्थान पर, "वित्तीय सलाहकार और मुख्य लेखा अधिकारी" शब्द रखे जाएंगे।

[सं. 1(1)/2006-टीपी]

अजीत सिंह, उप सचिव

टिप्पण :—मूल अधिसूचना भारत के राजपत्र में सं. का.आ. 2744, तारीख 2 जुलाई, 1983 द्वारा प्रकाशित की गई थी और तत्पश्चात् उसमें सं. का.आ. 1754, तारीख 30 जून, 1990 और का.आ. 1304(अ), तारीख 14 अगस्त, 2006 द्वारा संशोधन किए गए थे ।

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 20th November, 2006

S.O. 4711.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Commerce, (Department of Commerce) Number S.O. 2744, dated the 2nd July, 1983, namely :—

In the table appended to the said notification, in column 1, for the words and brackets "Officer on Special Duty (Administration)", the words "Financial Advisor and Chief Accounts Officer" shall be substituted.

[No. 1(1)/2006-TP]

AJIT SINGH, Dy. Secy.

Note : The principal notification was published in the Gazette of India, vide number S.O. 2744, dated the 2nd July, 1983 and subsequently was amended vide numbers S.O. 1754, dated the 30th June, 1990 and S.O. 1304(E), dated 14th August, 2006.

नई दिल्ली, 21 नवम्बर, 2006

का.आ. 4712.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स राईट्स लिमिटेड, वेस्टर्न रीज़न, दूसरा तल, चर्चगेट, स्टेशन बिल्डिंग, एम.के. रोड, मुम्बई-400020, को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, भारत सरकार के वाणिज्य मंत्रालय की, अधिसूचना सं. का.आ. 3975 और का.आ. 3978, तारीख 20 दिसम्बर, 1965 के साथ उपाबद्ध अनुसूची में यथा विनिर्दिष्ट क्रमशः खनिज और अयस्क ग्रुप-I अर्थात्, लौह अयस्क, मैंगनीज अयस्क, फेरो मैंगनीज स्लेग सहित फेरो मैंगनीज, चूर्ण बोक्साइट और खनिज सहित बोक्साइट और अयस्क ग्रुप-II अर्थात् क्रोम सांद्र सहित क्रोम अयस्क, और रेड आक्साइड के निर्यात से पूर्व निरीक्षण के लिए निम्नलिखित शर्तों के अधीन रहते हुए मुम्बई में उक्त खनिजों एवं अयस्कों का निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात् ,–

(i) कि मैसर्स राईट्स लिमिटेड, मुम्बई, खनिज तथा अयस्क ग्रुप-I का निर्यात (निरीक्षण) नियम, 1965 और खनिज तथा अयस्क ग्रुप-II का निर्यात (निरीक्षण) नियम, 1965, के नियम 4 के अधीन निरीक्षण का प्रमाण पत्र देने के लिए उनके द्वारा अपनाई गई पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी;

(ii) कि मैसर्स राईट्स लिमिटेड, मुम्बई इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण), निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित में दिए जा सकने वाले निदेशों से आबद्ध होंगे।

[फा. सं. 5(4)/2006-ईआई एंड ईपी]

वी.के. गाबा, उप सचिव

New Delhi, the 21st November, 2006

S.O. 4712.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rule), 1964, the Central Government hereby recognises M/s. RITES Ltd., Western Region, 2nd Floor, Churchgate, Station Building, M.K. Road, Mumbai-400020 as an Agency for a period of three years with effect from the date of publication of this notification in the Official Gazette, for inspection of Minerals and Ores Group-I, namely, Iron Ore, Manganese Ore, Ferromanganese including Ferromanaganese slag, Bauxite including calcined bauxite and Minerals and Ores Group-II, namely, Chrome Ore including Chrome concentrates, Red Oxide as specified in the Schedules annexed to the notifications of the Government of India in the Ministry of Commerce Numbers S.O. 3975 and S.O. 3978 both dated the 20th December, 1965, prior to the export of the said Minerals and Ore, at Mumbai, subject to the following conditions, namely :—

(i) that M/s. RITES Ltd., Mumbai shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in granting the certificate of inspection under rule 4 of the Export of Minerals and Ores-Group I (Inspection) Rules, 1965 and the Export of Minerals and Ores-Group II (Inspection) Rules, 1965;

(ii) that M/s. RITES Ltd., Mumbai in the performance of their function under this notification shall be bound by such directives as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[File No. 5(4)/2006-EI&EP]

V.K. GAUBA, Dy. Secy.

विद्युत मंत्रालय

नई दिल्ली, 21 नवम्बर, 2006

का.आ. 4713.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम

(4) के अनुसरण में पावरग्रिड कारपोरेशन ऑफ इंडिया लि., गुड़गांव के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है :

1. पावरग्रिड कारपोरेशन ऑफ इंडिया लि.
दादरी-मलेरकोटला पारेषण लाइन,
400 के. वी., बी.बी.एम.बी. उप केन्द्र,
सेवाह, पानीपत-132108
(हरियाणा)

2. पावरग्रिड कारपोरेशन ऑफ इंडिया लि.,
पारेषण लाइन कार्यालय, बैरा स्यूल कालोनी,
चमेरा अस्पताल के नजदीक, बनीखेत,
जिला चम्बा-176303
(हि. प्र.)

[सं. 11017/2/2006-हिंदी]
हरीश चन्द्र, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 21st November, 2006

S.O. 4713.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purposes of the union) Rules, 1976 the Central Government hereby notifies the following offices under the administrative control of Powergrid Corporation of India Ltd., Gurgaon, the staff where of have acquired 80% working knowledge of Hindi :—

1. Powergrid Corporation of India Ltd.,
Dadri-Malerkotla Transmission Line,
400 KV, BBMB Sub-Station,
Sewah, Panipat-132108 (Haryana)

2. Powergrid Corporation of India Ltd.,
Transmission Line Office, Baira Siul Colony,
Near Chamera Hospital,
Distt. Chamba-176303 (HP)

[No. 11017/2/2006-Hindi]
HARISH CHANDRA, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 20 नवम्बर, 2006

का.आ. 4714.—भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	3087 : 2005	संख्या 1, सितम्बर, 2006	15 नवम्बर, 2006

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 20th November, 2006

S.O. 4714.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standard, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	3087 : 2005	No. 1, September, 2006	15 November, 2006

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : CED/Gazette]

A.K. SAINI, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 22 नवम्बर, 2006

का.आ. 4715.—भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उपनियम (1) के खंड (ख) के अनुसरण में एतद्द्वारा अधिसूचित किया जाता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं, और वापस ले लिये गये हैं :

अनुसूची

क्रम संख्या	रद्द किये गये मानक की संख्या और वर्ष	भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) में का.आ. संख्या और तिथि प्रकाशित	टिप्पणी
(1)	(2)	(3)	(4)
1.	आई एस 1826 : 1961 स्पेसीफिकेशन फॉर वेनीशियन ब्लाइंड्स फॉर विंडोज	का. आ. 2937, दिनांक 16-12-1961	—
2.	आई एस 4962 : 1968 स्पेसीफिकेशन फॉर वुडन साईड स्लाइडिंग डोर्स	का. आ. 1455, दिनांक 19-4-1969	—

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' व प्रमुख (सिविल इंजीनियरी)

New Delhi, the 22nd November, 2006

S.O. 4715.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, it is, hereby notified that the Indian Standards, particulars of which are mentioned in the Schedule give hereafter, have been cancelled and stand withdrawn.

SCHEDULE

Sl. No.	No. and year of the Indian Standards cancelled	S.O. No. and date published in the Gazette of India, Part-II, Section 3, Sub-section (ii)	Remarks
(1)	(2)	(3)	(4)
1.	IS 1826 : 1961 Specification for Venetian blinds for windows	S.O. No. 2937 dated, 16-12-1961	—
2.	IS 4962 : 1968 Specification for wooden side sliding doors	S.O. No. 1455 dated, 19-4-1969	—

[Ref : CED/Gazette]

A. K. SAINI, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 23 नवम्बर, 2006

का.आ. 4716.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू हाने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 7276 : 1989 वस्तुओं के परिवहन के लिए व्यय न होने वाले सामान्य प्रयोजन के फ्लैट पैलेट-विशिष्टि (दूसरा पुनरीक्षण)	संशोधन संख्या 1, अक्टूबर, 2006	31 अक्टूबर, 2006
2.	आई एस 15636 : 2005 स्वचल वाहन-व्यावसायिक वाहनों के लिए वातिल टायर-आड़ी और रेडियल प्लाई-विशिष्टि	संशोधन संख्या 1, नवम्बर, 2006	30 नवम्बर, 2006

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद : जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : टी ई डी/जी-16]

राकेश कुमार, वैज्ञानिक एफ एवं प्रमुख (टी ई डी)

New Delhi, the 23rd November, 2006

S.O. 4716.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. Year and title of the Indian Standards	No. and Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 7276 : 1989 Non-expendable general purpose flat pallets for through transit of goods—Specification (Second Revision)	Amendment No. 1, October, 2006	31 Oct., 2006
2.	IS 15636 : 2005 Automotive vehicles—Pueumatic tyres for commercial vehicles—Diagonal and radial ply—Specification	Amendment No. 1, November, 2006	30 Nov., 2006

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : TED/G-16]

RAKESH KUMAR, Scientist F and Head (Transport Engg.)

नई दिल्ली, 28 नवम्बर, 2006

का.आ. 4717.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्थापित हो गये हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15686 : 2006 नदी घाटी परियोजनाओं के लिए भूवैज्ञानिक और भूतकनीकी मानचित्रों को तैयार करने की अनुशंसाएं	आई.एस. 6065 (भाग 1) : 1985 नदी घाटी परियोजनाओं के लिए भूवैज्ञानिक और भूतकनीकी मानचित्रों को तैयार करने की अनुशंसाएं भाग 1 स्केल (प्रथम पुनरीक्षण)	31-10-2006

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : डब्ल्यू आर डी 5/टी-23]

ए. एम. डेविड, वैज्ञा-ई, निदेशक (जल संसाधन विभाग)

New Delhi, the 28th November, 2006

S.O. 4717.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 15686 : 2006 Recommendations for Preparation of Geological and Geotechnical Maps for River Valley Projects	IS 6065 (Part 1) : 1985 Recommendations for the Preparation of Geological and Geotechnical Maps for River Valley Project : Part 1 Scales (First revision)	31-10-2006

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : WRD 5/T-23]

A. M. DAVID, Sc-E, Director (Water Resources Deptt.)

नई दिल्ली, 29 नवम्बर, 2006

का.आ. 4718.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिये गये हैं वे स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 14953-2006 वस्त्रादि-पोलिएस्टर अथवा पोलिएमाइड की मच्चछरदानियां विशिष्टि (पहला पुनरीक्षण)	आई एस 14953-2006	अक्टूबर, 2006

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों, अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : टी एक्स डी/जी 25]

एम. एस. वर्मा, निदेशक एवं प्रमुख (टीएक्सडी)

New Delhi, the 29th November, 2006

S.O. 4718.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS : 14953 : 2006 Textiles-Polyester or Polyamide Mosquito Net-Specification (First Revision)	IS 14953 : 2006	October, 2006

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : TXD/G-25]

M. S. VERMA, Director and Head (Textiles)

नई दिल्ली, 29 नवम्बर, 2006

का.आ. 4719.—भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 11248, 1995	संशोधन संख्या 2, नवम्बर, 2006	नवम्बर, 2006

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : टी एक्स डी/जी-25]

एम. एस. वर्मा, निदेशक एवं प्रमुख (टीएक्सडी)

New Delhi, the 29th November, 2006

S.O. 4719.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments of the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 11248 : 1995	Amendment No. 3, November, 2006	November, 2006

Copy of this Amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : TXD/G-25]

M. S. VERMA, Director and Head (Textiles)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 8 दिसम्बर, 2006

का.आ. 4720.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 3484, तारीख 29 अगस्त, 2006, जो भारत के राजपत्र तारीख 2 सितंबर, 2006 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में महाराष्ट्र राज्य में लोनी (पुणे) से पकनी (सोलापुर) तक हजारवाडी के रास्ते पेट्रोलियम उत्पादों के परिवहन के लिये मुम्बई-पुणे पाइपलाइन विस्तार परियोजना के माध्यम से हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिये उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 1 नवम्बर, 2006, को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन, केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिये अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिये उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड में निहित होगा ।

अनुसूची

तालुका: तासगांव जिला: सांगली राज्य: महाराष्ट्र

क्रम सं	गांव का नाम	सर्वे नंबर	गट नंबर	उप-खण्ड संख्या	क्षेत्रफल हेक्टर	एयर	वर्ग मीटर
1	2	3	4	5	6	7	8
1.	निमणी		449		00	02	70
			475		00	01	94
			476		00	03	85
			477		00	02	47
			496		00	01	20
			492		00	08	31
			488		00	01	94
	निमणी		487		00	05	89
	(–जारी)		486		00	15	14
			कुल		**00**	**43**	**44**
2.	नेहरू नगर		64		00	16	76
			66		00	01	83
			67		00	07	97
			28		00	04	45
			24		00	00	71
			4		00	01	28
			कुल		**00**	**33**	**00**
3.	येलावी		1949		00	03	69
			2237		00	02	64
			27		00	16	54
			257		00	01	05
			1860		00	10	11
			1880		00	01	89
			1881		00	06	60
			1882		00	03	60
			1946		00	00	50
			1971		00	01	00
			1948		00	07	68
			कुल		**00**	**55**	**30**
4.	तासगांव	689		2	00	22	63
		640		2	00	07	85
		642			00	15	41
		641			00	29	07
		622			00	48	24
		611			00	14	10
		549			00	02	56
		459			00	28	93
		380			00	04	88
		321			00	02	99
		185			00	06	28
		कुल			**01**	**82**	**94**
5.	चिंचणी		539		00	01	50
			540		00	04	24
			544		00	02	90
			553		00	06	63
			576		00	08	98
			575		00	15	43
			618		00	01	58
			622		00	13	30
			863		00	10	74
			862		00	01	30
			904		00	02	68
			1003		00	08	63
			1005		00	01	71

1	2	3	4	5	6	7	8
5.	चिंचणी (-जारी)		1043		00	03	71
			कुल		**00**	**83**	**33**
6.	भैरेवाडी		182		00	11	75
			171		00	06	88
			170		00	00	82
			कुल		**00**	**19**	**45**
7.	सावर्डे		280		00	01	40
			कुल		**00**	**01**	**40**
8.	कौलगे		274		00	00	46
			273		00	03	91
			152		00	03	19
			108		00	00	40
			कुल		**00**	**07**	**96**
9.	वाघापुर		364		00	00	61
			366		00	06	65
			365		00	01	20
			370	4	00	18	19
			कुल		**00**	**26**	**65**
10.	खुजगांव		103		00	27	46
			104		00	04	06
			कुल		**00**	**31**	**52**
11.	बस्तवडे		770		00	01	99
			कुल		**00**	**01**	**99**
12.	सावलज	317			00	09	04
		104	4		00	01	41
		107	4		00	06	51
		56			00	07	71
		19			00	09	52
		533			00	07	25
		555	1+अ+4ब+3+5+6		00	02	02
		7	5ब+2ब		00	13	88
		कुल			**00**	**57**	**34**

[फा. सं. आर-31015/26/2004-ओआर-II]

ए. गोस्वामी, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 8th December, 2006

S.O. 4720.—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 3484, dated the 29th August, 2006, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), Published in the Gazette of India dated the 2nd September, 2006, the Central Government declared its intention to acquire the Right of User in the land, specified in the Schedule appended to that Notification for the purpose of laying an extension pipeline for transportation of petroleum products through Mumbai-Pune Pipeline Extension Project from Loni (Pune) to Pakni (Solapur) via Hazarwadi in the State of Maharashtra by Hindustan Petroleum Corporation Limited;

And whereas the copies of the said Gazette Notification were made available to the public on 1st November, 2006;

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the Right of User therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the land specified in the Schedule, appended to this notification is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of the publication of this declaration, in Hindustan Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

Taluka: Tasgaon District: Sangali State : Maharashtra

Sr. No.	Name of the Village	Survey No.	Gat No.	Sub-Division No.	Area Hec.	Are sq. mt.
1	2	3	4	5	6	7	8
1	Nimani		449		00	02	70
			475		00	01	94
			476		00	03	85
			477		00	02	47
			496		00	01	20
			492		00	08	31
			488		00	01	94
			487		00	05	89
			486		00	15	14
				Total	**00**	**43**	**44**
2.	Nehru Nagar		64		00	16	76
			66		00	01	83
			67		00	07	97

1	2	3	4	5	6	7	8
2.	Nehru Nagar		28		00	04	45
			24		00	00	71
			4		00	01	28
				Total	00	33	00
3.	Yelavi		1949		00	03	69
			2237		00	02	64
			27		00	16	54
			257		00	01	05
			1860		00	10	11
			1880		00	01	89
			1881		00	06	60
			1882		00	03	60
			1946		00	00	50
			1971		00	01	00
			1948		00	07	68
				Total	00	55	30
4.	Tasgaon	689		2	00	22	63
		640		2	00	07	85
		642			00	15	41
		641			00	29	07
		622			00	48	24
		611			00	14	10
		549			00	02	56
		459			00	28	93
		380			00	04	88
		321			00	02	99
		185			00	06	28
				Total	01	82	94
5.	Chinchani		539		00	01	50
			540		00	04	24
			544		00	02	90
			553		00	06	63
			576		00	08	98
			575		00	15	43
			618		00	01	58
			622		00	13	30
			863		00	10	74
			862		00	01	30
			904		00	02	68
			1003		00	08	63
			1005		00	01	71
			1043		00	03	71
				Total	00	83	33
6.	Bahirewadi		182		00	11	75
			171		00	06	88
			170		00	00	82
				Total	00	19	45
7.	Sawarde		280		00	01	40
				Total	00	01	40
8.	Kaulge		274		00	00	46
			273		00	03	91
			152		00	03	19
			108		00	00	40
				Total	00	07	96
9.	Vaghapur		364		00	00	61
			366		00	06	65
			365		00	01	20
			370	4	00	18	19
				Total	00	26	65
10.	Khujgaon		103		00	27	46
			104		00	04	06
				Total	00	31	52
11.	Bastawade		770		00	01	99
				Total	00	01	99
12.	Sawlaj	317			00	09	04
		104		4	00	01	41
		107		4	00	06	51
		56			00	07	71
		19			00	09	52
		533			00	07	25
		555	1a+4b+3+5+6		00	02	02
		7	5b+2b		00	13	88
				Total	00	57	34

[F. No. R-31015/26/2004-OR-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 8 दिसम्बर, 2006

का.आ. 4721.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 961 तारीख 07 मार्च, 2006, जो भारत के राजपत्र तारीख 11 मार्च, 2006 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में महाराष्ट्र राज्य में लोनी (पुणे) से पकनी (सोलापुर) तक हजारवाडी के रास्ते पेट्रोलियम उत्पादों के परिवहन के लिये मुम्बई-पुणे पाइपलाइन विस्तार परियोजना के माध्यम से हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटिड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिये उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 28 जुलाई, 2006, को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिये अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिये उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटिड में निहित होगा।

अनुसूची

तालुका: तासगांव जिला: सांगली राज्य: महाराष्ट्र

क्रम सं.	गांव का नाम	सर्वे नंबर	गट नंबर	उप. खण्ड संख्या	क्षेत्रफल हेक्टर	एयर	वर्ग मीटर
1	2	3	4	5	6	7	8
1.	येलावी		1952		00	13	14
			1949		00	14	84
			1950		00	04	99
			1969		00	04	61
			1968		00	13	97
			1967		00	08	85
			1973		00	66	15
			1975		00	08	58
			1978		00	14	68
			1977		00	03	64
			1980		00	07	09
			1981		00	05	37
			2056		00	05	74
			2057		00	12	92
			गट नंबर 2057 और 2060 के बीच में अस्फालटड रास्ता		00	03	07
			2060		00	03	06
			2061		00	08	81
			गट नंबर 2061 और 2063 के बीच में गाड़ी रास्ता		00	02	38
			2063		00	12	26
			2065		00	05	95
			2066		00	05	85
1.	येलावी (निरंतर)		2047		00	11	63
			2046		00	10	33
			2044		00	05	36
			2042		00	05	88
			2041		00	02	64
			2235		00	03	23
			2236		00	06	24
			2260		00	22	45
			2256		00	12	69
			2258		00	11	50
			गट नंबर 2258 और 29 के बीच में मेटल्ड रास्ता		00	02	51
			27		00	18	59
			28		00	02	77
			30		00	05	35
			20		00	08	69
			19		00	00	50
			18		00	32	33
			35		00	12	79
			36		00	07	25
			14		00	00	30
			37		00	20	64
			38		00	12	28
			40		00	00	44
			41		00	02	75
			42		00	03	00
			43		00	04	00
			44		00	02	90
			45		00	05	38
			46		00	07	35
			57		00	39	60
			55		00	34	07
			291		00	81	43
			290		00	04	09
			गट नंबर 290 और 285 के बीच में रास्ता		00	02	57
			285		00	41	17
			284		00	09	05
			283		00	05	50
			282		00	04	63
			281		00	04	56
			280		00	02	56
			279		00	10	16
			278		00	02	93
			277		00	03	73
			276		00	02	83
			275		00	04	45
			274		00	06	32

1	2	3	4	5	6	7	8
1.	येलावी (निरंतर)		273		00	02	73
			272		00	02	89
			271		00	02	72
			270		00	02	73
			266		00	05	59
			265		00	06	00
			264		00	10	71
			263		00	04	75
			262		00	07	57
			261		00	08	86
			260		00	08	94
			259		00	06	39
			258		00	13	68
			256	4	00	09	64
			257		00	10	25
				कुल	08	30	82

[फा. सं. आर-31015/26/2004-ओआर-II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 8th December, 2006

S.O. 4721.—Whereas by Notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 961, dated the 7th March, 2006, issued under Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India dated the 11th March, 2006, the Central Government declared its intention to acquire the right of user in the land, specified in the Schedule appended to that Notification for the purpose of laying an extention pipeline for transporation of petroleum products through Mumbai-Pune Pipeline Extension Project from Loni (Pune) to Pakni (Solapur) via Hazarwadi in the State of Maharashtra by Hindustan Petroleum Corporation Limited.

And whereas copies of the said Gazette Notification were made available to the public on the 28th July, 2006;

And whereas the Competent Authority has, under Sub-section (1) of Section 6 of the said Act, submitted report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the Land specified in the Schedule, appended to this Notification is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of the publication of this declaration, in the Hindustan Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

Taluka : Tasgaon **District: Sangli**

State : Maharashtra

Sr. No.	Name of the Village	Survey No.	Gat No.	Sub-Division No.	Area Hec.	Are	Sq. mt
1	2	3	4	5	6	7	8
1.	Yelavi		1952		00	13	14
			1949		00	14	84
			1950		00	04	99
			1969		00	04	61
			1968		00	13	97
			1967		00	08	85
			1973		00	66	15
			1975		00	08	58
			1978		00	14	68
			1977		00	03	64
			1980		00	07	09
			1981		00	05	37
			2056		00	05	74
			2057		00	12	92
		Asphalted Road in between Gat No. 2057 & 2060			00	03	07
			2060		00	03	06
			2061		00	08	81
		Cart Track in between Gat No. 2061 & 2063			00	02	38
			2063		00	12	26
			2065		00	05	95
			2066		00	05	85
			2047		00	11	63
			2046		00	10	33
			2044		00	05	36
			2042		00	05	88
			2041		00	02	64
			2235		00	03	23
			2236		00	06	24
			2260		00	22	45
			2256		00	12	69
			2258		00	11	50
		Metalled Road in between Gat No. 2258 & 29			00	02	51

1	2	3	4	5	6	7	8
	Yelavi-(Contd.)		27		00	18	59
			28		00	02	77
			30		00	05	35
			20		00	08	69
			19		00	00	50
			18		00	32	33
			35		00	12	79
			36		00	07	25
			14		00	00	30
			37		00	20	64
			38		00	12	28
			40		00	00	44
			41		00	02	75
			42		00	03	00
			43		00	04	00
			44		00	02	90
			45		00	05	38
			46		00	07	35
			57		00	39	60
			55		00	34	07
			291		00	81	43
			290		00	04	09
			Road in between Gat No 290 & 285		00	02	57
			285		00	41	17
			284		00	09	05
			283		00	05	50
			282		00	04	63
			281		00	04	56
			280		00	02	56
			279		00	10	16
			278		00	02	93
			277		00	03	73
			276		00	02	83
			275		00	04	45
			274		00	06	32
			273		00	02	73
			272		00	02	89
			271		00	02	72
			270		00	02	73
			266		00	05	59
			265		00	06	00
			264		00	10	71
			263		00	04	75
			262		00	07	57
			261		00	08	86
			260		00	08	94
			259		00	06	39
			258		00	13	68
			256	4	00	09	64
			257		00	10	25
				Total	08	30	82

[F. No. R-31015/26/2004-OR-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 8 दिसम्बर, 2006

का.आ. 4722.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 1853 तारीख 12 मई, 2006, जो भारत के राजपत्र तारीख 13 मई, 2006 में प्रकाशित की गई थी, द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में महाराष्ट्र राज्य में लोनी (पुणे) से पकनी (सोलापुर) तक हजारवाडी के रास्ते पेट्रोलियम उत्पादों के परिवहन के लिये मुम्बई-पुणे पाइपलाइन विस्तार परियोजना के माध्यम से हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिये उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख 01 अगस्त, 2006, को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात्, और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिये अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अत:, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिये उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगमों से मुक्त, हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड में निहित होगा।

अनुसूची

तालुका: तासगांव जिला: सांगली राज्य: महाराष्ट्र

क्रम सं.	गांव का नाम	सर्वे नंबर	गट नंबर	उप-खण्ड संख्या	क्षेत्रफल हेक्टर	एयर	वर्ग मीटर
1	2	3	4	5	6	7	8
1.	येलावी		1783		00	00	30
			1784		00	01	75
			1782		00	03	15
			1781		00	19	80
			1780		00	14	40
			1779		00	15	48
			1778		00	10	44
			1772		00	53	82
			1790		00	36	45
			गट नंबर 1790 और 1855 के बीच में रा.मा. 75		00	03	60
			1855		00	45	00
			1862		00	00	50
			1861	अ	00	24	96
			1861	ब	00	37	00
			1859		00	12	32
			1750		00	01	98
			1880		00	00	60
			1749		00	23	92
			1947		00	06	60
			1948		00	30	60
			1949		00	06	49
				कुल	03	49	16

[फा. सं. आर-31015/26/2004-ओआर-II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 8th December, 2006

S.O. 4722.—Whereas by Notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. **1853, dated 12th May, 2006,** issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), published in the Gazette of India, dated the 13th May, 2006, the Central Government declared its intention to acquire the Right of User in the land, specified in the Schedule appended to that Notification for the purpose of laying an extention pipeline for transportation of petroleum products through Mumbai-Pune Pipeline Extension Project from Loni (Pune) to Pakni (Solapur) Via Hazarwadi in the State of Maharashtra by Hindustan Petroleum Corporation Limited;

And whereas the copies of the said Gazette Notification were made available to the public on the 1st August, 2006;

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification, is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on this date of the publication of this declaration, in Hindustan Petroleum Corporation Limited, free from all encumbrances.

SCHEDULE

Taluka: Tasgaon District: Sangali State : Maharashtra

Sr. No.	Name of the village	Survey No.	Gat No.	Sub-Division No.	Area Hec.	Are	Sq. mt
1	2	3	4	5	6	7	8
1	Yelavi		1783		00	00	30
			1784		00	01	75
			1782		00	03	15
			1781		00	19	80
			1780		00	14	40
			1779		00	15	48
			1778		00	10	44
			1772		00	53	82
			1790		00	36	45
			SH 75 in between Gat No. 1790 and 1852		00	03	60
			1855		00	45	00
			1862		00	00	50
			1861	A	00	24	96
			1861	B	00	37	00
			1859		00	12	32
			1750		00	01	98
			1880		00	00	60
			1749		00	23	92
			1947		00	06	60
			1948		00	30	60
			1949		00	06	49
				Total	03	49	16

[F. No. R-31015/26/2004-OR-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 6 दिसम्बर, 2006

का.आ. 4723.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 154, दिनांक 11 जनवरी, 2005 का आंशिक आशोधन करते हुए, दिल्ली राष्ट्रीय राजधानी क्षेत्र तथा हरियाणा और उत्तर प्रदेश राज्यों के राज्य क्षेत्र के भीतर, उक्त अधिनियम के अधीन, मांगल्या (इन्दौर) से पियाला/बिजवासन तक भारत पेट्रोलियम कॉरपोरेशन लिमिटेड (बीपीसीएल) की मुम्बई-मांगल्या पाइपलाइन विस्तार परियोजना के लिए सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए श्री अजय रतन, प्रबन्धक, एम एम आई पी एल विस्तार परियोजना, बी पी सी एल को तत्काल प्रभाव से तीन महीने के लिए अथवा अगले आदेशों तक, जो भी पहले हो, के लिए प्राधिकृत करती है ।

[फा. सं. आर.-31015/8/2004-ओआर-II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 6th December, 2006

S.O. 4723.— In partial modification of notification of Government of India in the Ministry of Petroleum and Natural Gas No. S. O. 154, dated the 11th January, 2005 and in pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby authorises Shri Ajay Ratan, Manager, MMIPL Extension Project, Bharat Petroleum Corporation Limited (BPCL), to perform the functions of the Competent Authority for BPCL's Mumbai-Manglya Pipeline Entension Project from Manglya (Indore) to Piyala/Bijwasan, under the said Act, within the territory of NCT of Delhi and States of Haryana and Uttar Pradesh for a period of three months, with immediate effect, and until further orders, whichever is earlier.

[F. No. R-31015/8/2004-OR-II]

A. GOSWAMI, Under Secy.

श्रम एवं रोज़गार मंत्रालय

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4724.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई. ओ. सी. एल. फरीदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय II, नई दिल्ली के पंचाट (संदर्भ संख्या आई डी. 14 ऑफ 2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-30012/64/2005-आई. आर.(एम)]

एन. एस. बोरा, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th November, 2006

S.O. 4724.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID 14/2006) of the Central Government Industrial Tribunal-cum-Labour Court, II, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of IOCL, Faridabad and their workman, which was received by the Central Government on 13-11-2006.

[No. L-30012/64/2005-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Presiding Officer : R. N. Rai **I. D. No. 14/2006**

In the Matter of :—

Smt. Kamla Devi,
W/o. Late Shri P. C. Tak,
R/o.58, D, Pocket-I
Mayur Vihar, Delhi.

Versus

The General Manager,
M/s. IOCL, R & D Centre,
Sector—13,
Faridabad (Haryana)

AWARD

The Ministry of Labour by its letter No. L-30012/64/2005-IR (M) Central Government dt. 21-02-2006 has referred the following point for adjudication.

The point runs as hereunder:—

"Whether the action of the management of Indian Oil Corporation Limited, Faridabad in terminating the services of Shri P.C. Tak, Sr. Draftsman w.e.f. 31-07-2002 is just and legal? If not, to what relief the workman is entitled to."

It transpires from perusal of the order sheet that reference has been received in May, 2006. Notice has been served on the claimant/workman twice but no claim has been filed. Management was present all along from 31-07-2006.

No dispute award is given.

Date: 31-10-2006.

R. N. RAI, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4725.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केरल मिनरलस और मेटल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनाकूलम, कोची

के पंचाट (संदर्भ संख्या आई. डी. 143/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-29011/16/2006-आई आर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4725.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID 143/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, Kochi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kerala Minerals & Metals Ltd. and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-29011/16/2006-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri P.L. Norbert, B.A., L.L.B., Presiding Officer

(Monday the 30th day of October, 2006/8th Karthika, 1928)

I. D. 143/2006

(I. D. 26/2005 of Industrial Tribunal, Kollam)

Workman/Union : The General Secretary,
Kerala Mineral Employees
Union (AITUC)
C/o Kerala Minerals & Metals Ltd.
Kovithotam, Chavara P. O.
Kollam-691 583.

Adv. Shri G. Sethunathan Pillai

Management : The Managing Director
Kerala Minerals & Metals Ltd.,
Chavara, P. O. Kollam.

Adv. Shri P.V. Lohithakshan

AWARD

This is a reference made by Central Government under Section 10 (1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is:—

> "Whether the demand of the Kerala Minerals Employees Union for promotion to the 14 unskilled workers whose names are shown in the list annexed herewith is justified? If so, to what relief, the concerned 14 workmen are entitled to?"

2. Though notice was given to both sides only management entered appearance. The union is remaining absent continuously. Neither the union nor the workmen who are aggrieved by the action of the management are present. There is no representation also for the union. Hence it has to be presumed that there is no existing dispute.

3. In the result, an award is passed finding that there is no existing dispute between the parties and the demand of members of the union for the promotion is not justified. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of October, 2006.

APPENDIX : Nil P. L. NORBERT, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4726.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोचिंग पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अरनाकूलम, कोची के पंचाट (संदर्भ संख्या आई डी. 73/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-35011/2/99-आई आर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4726.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID 73/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, Kochi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Cochin Port Trust and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-35011/2/99-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri P.L. Norbert, B.A., L.L.B., Presiding Officer

(Wednesday the 25th day of October, 2006/3rd Kartika, 1928)

I. D. 73/2006

(ID 58/99 of Labour Court, Ernakulam)

Workman/Union : The Working President
Cochin Port Employees
Organisation
Willingdon Island
Kochi-682 009

Adv. Shri T.A. Shaji

Management : The Chairman
Cochin Port Trust
Willingdon Island
Kochi-682 003.

Adv. M/s Menon & Pai

AWARD

This is a reference made by Central Government under Section 10 (1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is :—

" Whether the action of the management of Cochin Port Trust in clubbing Sunday and Holiday wages with O.T. for computations of O.T. payment w.e.f. 10-12-93 is fair and justified?"

Whether the action of the management of Cochin Port Trust in imposing 25% of total wages as ceiling for payment of Sunday and Holiday wages and O.T. and denying the entitled payment to workmen after availing the work since 10-12-93 is fair and justified? If not, to what relief the workmen are entitled?"

2. The facts in brief are as follows:—

According to the union there was a settlement on 19-1-1994 between the management and the union regarding overtime work. It was agreed that it is for the management to decide whether overtime work has to be assigned to the workers or not. The implementation of the settlement was to be reviewed by holding monthly meetings. The management however violated the terms of settlements and misused their powers and discretion in the matter of assignment of overtime work and payment of wages for overtime work. No monthly meeting was held. The management imposed a ceiling of overtime wages to 25% of the total wages. They also decided to club Sundays and holidays with overtime. This is illegal. Once the workers are engaged for overtime work they are entitled to get wages in full. The work on Sundays and Holidays cannot be linked to overtime and wages limited to 25% of total wages.

3. The management contends that the decision to restrict overtime wages to 25% was taken in 1993. It is after six years that the union is raising the dispute. The management had issued a circular to that effect in 1993 itself. The claim has become stale. Since the overtime expenditure was heavy the Ministry of Surface Transport had cautioned the Port Trust about the increase in overtime expenditure. Hence the Port Administration decided to limit the payment of overtime to 25% of total wages. This restriction was in force for long time and has become an established practice. However, in special cases the Chairman has discretion to exceed the limit of 25%. It is not practical to reopen cases of the last few years. The management has not violated the terms of agreement. The management decided to club Sunday and holiday wages to overtime in order to reduce expenditure. The union is not entitled to any relief.

4. The union filed a rejoinder in reply to the contentions of the management stating that the industrial dispute was raised before the Regional Labour Commissioner (Central) in 1994 itself and a strike notice was issued to the management on 1-11-1995 regarding the issue. There was an understanding before the conciliation officer regarding payment of overtime wages in full. But the management did not comply with the decisions taken in the conciliation. The union has been persuading the management to implement the decision taken in the conciliation by letters dated 25-8-1998 and 21-1-1998. Rest of the contentions in the rejoinder are repetitions of earlier contentions taken in the claim statement.

5. In the light of the above pleadings the following points arise for consideration:

(1) Is the claim belated and stale?

(2) Whether the decision of the management to limit overtime wages to 25% of emoluments of an employee is legal and correct?

(3) Whether linking Sunday and holiday wages to overtime wages and limiting O.T. to 25% are correct?

(4) Reliefs and costs.

The evidence consists of the documentary evidence of Exts. WI to W6 alone on the side of union.

6. Point No. (1) :

The circular imposing restriction on payment of O.T. to 25% of emoluments was issued on 9-12-1993 by the management. Ext. W1 is copy of the circular. On 19-1-1994 there was a settlement between management and union regarding O.T. Ext. W2 is the copy of the settlement. The union made a representation to the Chairman of the Cochin Port on 24-4-1995 to comply with the terms of settlement of 1994 and pay full wages for overtime and de-link Sunday and Holiday from O.T. Ext. W3 is copy of the representation. Thereafter there was a complaint to RLC (C) about violation of the settlement terms by the management and requesting to conciliate. On 6-3-1996 there was a discussion before RLC(C) and understanding between management and union. Ext. W4 is copy of minutes of discussion before RLC (C). Again there was a representation by the union to the Chairman of Cochin Port Trust on 25-8-1998 requesting to comply with the suggestion made by RLC (C) and the understanding arrived at on 6-3-1996 between the parties before RLC (C). Ext. W5 is the representation. Again a dispute was raised before Assistant Labour Commissioner (C) in 1998. On 12-1-1999 the union filed a counter statement before ALC(C) regarding O.T. payment and linking of Sunday and holiday with overtime. Ext. W 6 is copy of the counter statement. It is thereafter that the dispute was referred by the Government to the Labour Court on 7-7-1999. The case was pending before State Labour Court, Ernakulam as I.D. 53/99. It was made over to this court in July, 2006. Thus an industrial dispute was raised as soon as the management decided to impose restriction on overtime payment. The documents referred above show the same. Before dispute was referred to Labour Court the union made representation before management and approached RLC(C) for conciliation. This process continued till January, 1999. It was on 7-7-1999 that the dispute was referred to court by the Government. Thus there is no delay in raising the dispute.

7. Points No. (2) and (3) :

Ext. W1 is the circular issued by the management. It contains restriction regarding overtime payment. In 1994 there was a settlement between the parties regarding overtime contained in Ext. W2. It was agreed that assignment of overtime work was the discretion of the management. It was also agreed that all pending overtime claims will be reviewed by the chairman and payment will be made on 24-1-1994. Then there was conciliation before RLC(C) in which there was an understanding that persons who were deployed for overtime work and eligible for more than 25% of O.T. wages, will be paid full O.T. wages. The management agreed to consider this issue and make the payment as early as possible. In view of this understanding the union withdrew the strike notice given to the management. But the situation did not improve and ultimately an industrial dispute was raised and there was conciliation before ALC (C) and on failure there was a reference by Government to the court. It is not disputed by the management that normally and as per law overtime has to be paid in full. But keeping in view the need to check the O.T. expenditure there was an understanding between management and union to impose restriction on O.T. payment. On the basis of that understanding an administrative order Ext. W1 (circular) was issued. It is not a settlement. Hence it has no binding force on the union and its members. Circulars are issued to implement either the terms of settlement or clarify the clauses in the settlement or for giving direction to the officers of the establishment regarding day-to-day administration. Subsequent to the circular in 1994 there was a settlement between the parties regarding overtime which does not contain a stipulation to impose any restriction on O.T. payment or linking Sunday and holiday to overtime.

8. Section 59 of Factories Act provides for extra wages for overtime. S-59 (1) reads:—

> "Where a worker works in a factory for more than 9 hours in any day or for more than 48 hours in any week he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages."

A restriction on O.T. payment is against the provision under Factories Act and a settlement denying benefits of overtime wages, is not binding on the workman. In the present case there was not even a settlement. It was done by the management unilaterally by issuing a circular. It is neither in tune with Factories Act nor in terms of bilateral settlements between the management and union. At the time of argument the learned counsel for the management produced a settlement signed by the parties on 2-8-2000. The terms of settlement were given retrospective effect from 1-1-1997. Clause 19 of the settlement reads :—

> "If any employee is asked by the management to work beyond prescribed working hours, overtime allowance will be paid as per relevant laws governing the payment of this allowance and full payment will not be denied."

Going by the settlement of 2000, which has retrospective effect from 1-1-1997, the management has to follow Factories Act. The restriction imposed limiting O.T. payment to 25% of the emoluments is against the law and against the terms of 1994 and 2000 settlement. So also, linking of Sunday and holiday wages to overtime wages and then limiting overtime wages to 25% is against the provisions of law. The work on Sundays and holidays is treated for the purpose of payment as overtime work and payment made accordingly. Section 13 (1) (c) of Minimum Wages Act provides for payment for work on a day of rest at a rate not less than the overtime rate. Hence the wages for work done on Sundays and holidays is twice the ordinary rate of wages. This provision of the Minimum Wages Act is also flouted by the management by linking Sunday and holiday wages to overtime wages and then limiting O.T. wages to 25% of the emoluments of an employee. As already mentioned, it is against the provisions of law and against the terms of settlement. Therefore I find points (2) and (3) against the management.

9. Point No. (4): (See Award Portion)

10. In the light of the above findings it follows that the action of the management in clubbing Sunday and holiday wages to overtime wages and then restricting O.T. wages to 25% of emoluments of an employee is unfair and illegal. The workmen are therefore entitled for full wages for overtime work as well as holiday work separately.

11. In the result, an award is passed finding that the action of the management in linking Sunday and holiday wages to O.T. wages and restricting O.T. wages to 25% of emoluments of an employee is illegal and unfair and not justified and the workers are entitled to get full wages (twice the ordinary rate) for overtime work and for Sunday and holiday work, separately. However there is no order as to cost. The award will take effect one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of October, 2006.

P.L. NORBERT, Presiding Officer

APPENDIX

Witness for the Union : Nil

Witness for the Management : Nil

Exhibits for the Union :

WI— Photostat copy of Circular No. Estt./General/93-A dated 9-12-1993.

W2 —Photostat copy of Memorandum of Settlement dated 19-1-1994.

W3— Photostat copy of representation dated 24-4-1995 submitted by Cochin Port Employees' Organisation to the Chairman, Cochin Port Trust.

W 4—Photostat copy of Minutes of discussion dated 6-3-1996.

W5— Photostat copy of representation dated 25-8-1998 submitted by Cochin Port Employees' Organisation to the Chairman, Cochin Port Trust.

W 6—Photostat copy of counter statement filed on 12-1-1999 by union before ALC (C), Ernakulam.

Exhibits for the Management : Nil

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4727.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मोरमयूगो पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 65 ऑफ 2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-36011/1/2002-आई. आर.(एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4727.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65 of 2002) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Mormugao Port Trust and their workman, received by the Central Government on 13-11-2006.

[No. L-36011/1/2002-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT MUMBAI

Present

A. A. Lad, Presiding Officer

Reference No. CGIT- 2/65 of 2002

Employers in Relation to the management of Mormugao Port Trust

1. The Chairman
Mormugao Port Trust
Headland Sada
Goa-403 804.

2. The Chief Engineer
Mormugao Port Trust
Headland Sada
Goa-403 804.

And

Their Workmen

The General Secretary
Goa Port & Dock Employees Union
Kamgar Bhavan
5A, F.F.Figueiredo Complex
Swatantra Path, Vasco-da-Gama
Goa 403 802.

APPEARANCE

For the Employer : Mr. M.B. Anchan, Advocate

For the Workmen : Mr. J. H. Sawant, Advocate

Date of passing of Award : 10th October, 2006.

AWARD

I. The Government of India, Ministry of Labour by its Order No.L-36011/1/2002/IR(M) dated 1-8-2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the Seniority List of candidates prepared by the management of Mormugao Port Trust, Goa as shown in the Annexure 'C' is legally tenable or not? If not, what relief the concerned workmen are entitled ?"

MORMUGAO PORT TRUST

Annexure 'C'

Nomination of E. A. Gr. III of the select list of the S. S. C. held on 17-2-1994

Roster Point	Sr. No. of the select list	Name of the candidate from select list	File IGA 158 (CE) page No.	Date of receipt of VCA from the police	Date of nomination of the candidate to the department
1	2	3	4	5	6
1 (SC)	21	Shri Gurudas M. Gadkar (SC)	72	28-04-94	29-04-94
2	3	Shri Savoikar P. Pundalik	70	23-04-94	25-04-94
3 (ST)	—	—	—	—	—
4	1	Shri Abdusalle H. Shaik	68(b)	18-05-94	18-05-94
5 (OBC)	8	Mr. Louis R.Gonsalves	69	15-04-94	26-04-94
6	4	Kum. Roopa A. Naik Bandodkar	73	04-05-94	05-05-94

Roster Point	Sr. No. of the select list	Name of the candidate from select list	File IGA 158 (CE) page No.	Date of receipt of VCA from the police	Date of nomination of the candidate to the department
7	5	Mr. Lilesh B. Khandeparkar	91	17-05-94	17-05-94
8	2	Mr. Naik Sahadev Alias Pramod Bhat	92	12-05-94	19-05-94
9 (OBC)	6	Mr. Mirajgaonkar R. Tushar	93	09-05-94	23-05-94
10	7	Mr. Navint S. Arsekar	101	10-06-94	02-08-94
11 (OBC)	9	Mr. Sanjay S. Banaulikar	101	13-06-94	02-08-94
12	10	Mr. Roque Agnelo. J. Gomes	134	05-07-94	30-08-94
13	11	Mr. Trinidade D. David	159	18-05-94	29-09-94
14	12	Kum. Desa Bunny B. Agnelo	243	15-04-94	05-12-94
15 OBC	13	Mr. Barreto Neville Angelus	243	09-05-94	05-12-94
16	(ST)	Mr. Sunil S. Patkar (ST)	4	—	09-12-95
17 OBC	(OBC)	Mr. Socorro Silva (OBC)	50	08-02-95	02-01-96

2. To support the subject-matter referred in the reference, second party, Union files Statement of claim at Ex-11 stating and contending that approximately 150 candidates and following 25 candidates as mentioned in para 2 of Statement of claim are the subject-matter of this reference who alleges that they were selected for the post of Engineering Assistant Grade -III. They were ranked as mentioned in the Statement of claim Thereafter, management interviewed 10 more candidates of OBC categories on 17-11-94, and one of them by name Shri Socorro Silva was selected for the post of Engineering Assistant in the interview held on 17-11-94. Accordingly appointment letters were issued to the candidates in the year 1994 who are at Sr. Nos. 1-30 of the merit list as shown in the para 2 of the Statement of claim. Out of them, candidates at Sr. No.1-6, 8, 9 as well as 12, 13 accepted said appointment as shown in para 5 of the Statement of claim on the date given against their names.

3. Management issued appointment order to above recruited employee. Shri Socorro Silva in January, 1996 though he was interview on 17-11-94 giving effect from 2-1-96. Said employee i.e. Shri Socorro Silva did not appear in the merit list as shown at para 2 of the Statement of claim. Appointment given to Socorro Silva was issued ignoring the legitimate claim of the candidates who were in the list dt. 17-2-94.

4. Management issued offer of appointment letters to the candidates shown at Sr. Nos. 14,16,18,19,21,22,24 & 25 of the merit list of their 1996-1997 and 1997-1998. Out of them candidates mentioned in para 7 of the Statement of claim, accepted said appointment on the dates given against their names.

5. According to Union, workman in the category of Engineering Assistant Gr-III are entitled to be promoted to the post of Jr. Engineer Gr.-III and further promotional post on the basis of their seniority fixed as per their ranks in the order of merit. According to Union Management is liable to maintain the seniority of the workman in the post of Engineering Assistant Gr-III as shown in the para 2 of the Statement of claim. However, it ignored and failed to maintain the same and one Socorro Silva who did not appear in the merit list was promoted to the post of Jr. Engineer Gr-III on 28-8-2000 ignoring the claim of the other i.e. claim of Shri C. Gomes who was senior to Socorro Silva. According to Union, promotion given to Socorro Silva was given depriving the claim of Shri C. Gomes. Even the workmen mentioned at Sr.Nos.1-30 except workmen mentioned at Sr. Nos.7, 10,11, were benefited by the said seniority list. The employees, whose names are at Sr Nos. 14 to 25 except employees at Sr. Nos.17, 20 & 23, were not benefited as per the seniority list. The workmen whose name appear at Sr. Nos.14 to 25 were subsequently promoted to the post of Jr. Engineer Gr.III as mentioned in para 8 to the Statement of claim.

6. According to union, the employees whose names appear in the merit list dt. 17-2-94 must be granted seniority as per said merit list and benefit as given to Shri Socorro Silva must be given to all. So it is prayed that, the decision taken by Management in not granting seniority and not giving consequential benefits of the said seniority to the said workman who where listed in the list 17-2-94 as shown in para 2 of Statement of claim be declared illegal and unjustifiable and request to direct Management, the employees mentioned in para 2 of the Statement of claim who were in merit list dt. 17-2-94 be granted seniority as

per the merits.

7. This prayer is disputed by the first party by filing Written Statement at Ex-12 stating and contending that, the list mentioned by the Union was list for all purpose but was in respect of unreserved category and not for reserved category. It is stated that, 10 candidates were interviewed of OBC category in 17-11-94 to fill the backlog. As such, promotion given to those, ignoring claim of other, more precisely promotion given to Socorro Silva ignoring claim of others which is challenged by the union has no force since said was given to fill the backlog and by following reservation policy.

8. It is stated that, appointment was given to Shri Socorro Silva against backlog vacancy of the year 1994 which was reserved for OBC and as such said Socorro Silva was posted from 2-1-96. It is denied that name of Socorro Silva was not in the merit list of para 2 of the Statement of claim. It is denied that, management has ignored the legitimate claim of the candidates whose names were in the merit list dt. 17-2-94. It is stated that, management has given appointment letter to the candidates mentioned in the para 9 of Written Statement who were appointed against the unreserved post after filling backlog of OBC. It is stated that, by doing so, no injustice has been done by the management in accommodating Socorro Silva to fill the OBC backlog.

9. Seniority list is prepared on the basis of appointment to the candidates of unreserved category and separate list of the candidates who belong to SC, ST and OBC category was prepared as per roster points. Accordingly, promotions are given and no injustice was done by the management in promoting the employees as per the roster point. It is submitted that, the grievances of the union which is referred in the reference has no meaning.

10. In view of the pleading my Learned Predecessor framed issues at Ex-14 which I answered as follows:

ISSUES	FINDINGS
1. Whether the Seniority list of candidates prepared by management of MPT, Goa as shown in Annexure 'C' is legally tenable or not?	Is tenable.
2. What relief the concerned workmen are entitled?	No relief.

Reasons

Issues Nos 1 & 2.

11. The issue of promotion is raised by Union stating that one Socorro Silva was promoted though he was not in merit list. Whereas case of the first party is that, promotion given to Socorro Silva was given since he belongs to OBC category and he was posted to fill the backlog of OBC category as per roster point.

12. To support that, II party, Union has examined Shri Ulhas Gurav as its witness by filing affidavit at Ex-36, who stated that, the claim of the Union which is reproduced above. Said witness, was cross-examined by the management and in it he states that, the point of seniority of the members is agitated by the Union. He admits that staff selection committee did the selection for the post of Engineering Assistant Gr-III on 17-2-94. He states that, 150 candidates were called and out of them 25 were selected, 2 were listed in merit. He could not state, whether 10 candidates were appointed for Engineering Asst. Gr-III from list of April 1994 against the existing vacancies. He admits that, on 17-11-94, selection committee held selection process for backward classes. He states that, he does not know whether Shri Socorro Silva belongs to OBC category and so he was appointed. He admits that, appointment of Socorro Silva was as per the Government policy on reservation. Thereafter Union closed evidence by filing purshis Ex-37 and management, filed affidavit of Maria Silveira at Ex-38 who explained the background in which promotions were given. This witness was cross-examined by Union Advocate Where he states that, promotions were given as per the reservation policy and list was prepared accordingly. Then management closed evidence by filing purshis Ex-39.

13. Second party files written Submission at Ex-40 whereas First party at Ex-41. Both in their respective Written Arguments repeated the same story as what is stated in their pleadings which I have reproduced above.

14. Here, core point arises, whether promotion given to Shri Socorro Silva was given out of way and whether it was against the reservation policy which ignored the legitimate claim of the candidates involved in the reference? Here it is to be noted that, to make out a case of lien over promotion, Union rely on evidence of Gurav. However it is to be noted that, it is not pointed out how promotion given to Shri Silva affected the legible claim of other candidates? Gurav examined by the Union has no knowledge whether Silva of whose capital is made by the Union in saying that promotion given to Shri Silva was given ignoring the claim of legitimate claimants, is of OBC category or what? Case of the management is that, Shri Socorro Silva was promoted to fill the backlog. As far as that aspect is concerned, nothing is stated by the Union and not shown how decision taken by management in promoting Shri Silva is against the rules of reservation. When management justify the promotion of Silva to fill the backlog saying that he was promoted to fill the backlog, in my considered view it require to be considered, while considering the case of the Union. Union says that, Silva was promoted ignoring claim of employees listed in para 2 of the Statement of claim and that he was not in the merit list. But the case of the Management is that, Silva was in the list but he was promoted being a candidate of OBC category. Union has not disputed the status of Silva being a candidate of OBC category. Even it is not pointed out which category was to get what number of posts. No specific case is made out by the Union to show that open category is entitled to get particular post and SC, ST and OBC are entitled to get such and such post. Against that, case made out by the

management is that, promotion was given to fill the backlog and it was given as per the roster point. When that case is made out and it is not disputed by the Union, I feel it is not necessary to disturb the decision of the management in promoting Shri Silva.

15. When Union failed to prove that, promotion given to Silva was illegal and against norms of the reservation and roster point, I am of the opinion that, dispute raised by Union about Silva cannot be considered. Besides Silva is not a party in this reference. Without his presence in the reference, any thing cannot be commented which will go against him as it will affect on his personality and career. Considering the case made out by both, I conclude that, reference has no meaning and deserve to be rejected. So I answer above issues to that effect and passes the following Order :

ORDER

Reference is rejected.

Mumbai 10-10-2006

A. A. LAD, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2006

का.आ 4728.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 35/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-40012/164/2004-आई. आर. (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4728.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 13-11-2006.

[No. L-40012/164/2004-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 22nd September, 2006

PRESENT

K. JAYARAMAN, Presiding Officer

Industrial Dispute No.35/2005

In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of BSNL, Railway Electrification Project and their workmen)

BETWEEN

Sri B. Ganesan : I Party/Petitioner

AND

1. The Divisional Engineer (Telecom), BSNL, Railway Electrification Project, CHENNAI — II Party/Petitioner
2. The Chief General Manager, BSNL ** Tamil Nadu Circle, Chennai.
   ** impleaded as 2nd Respondent vide I. A.Order No.292/2005 dt. 20-1-2006.

APPEARANCE

For the Petitioner : M/s. M.Gnanasekar, Advocates

For the Management : M/s.P.Arulmudi & Co. Sri P.Srinivasan. Advocates

AWARD

The Central Government, Ministry of Labour vide Order No.L-40012/164/2004-IR(DU) dated 23-03-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:—

> "Whether the action of the management of BSNL in terminating the services of Shri B.Ganesan with effect from 2-9-90 is justified? If not, to what relief he is entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 35/2005 and notices were issued to both the parties and both sides entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner has worked as casual labour from 1-12-84 to 10-4-85 in the Railway Electrification project. Thereafter, the Petitioner was employed from 11-1-88 to 02-09-90 continuously for 803 days. He was denied employment w.e.f. 2-9-90. Then he filed an O.A. No.302 of 1991 before Central Administrative Tribunal, Chennai Bench. The Central Administrative Tribunal, Chennai by an order dated 21-3-91 dismissed the said O.A. giving liberty to the Petitioner to raise an industrial dispute. Then the Petitioner made a representation to Labour Enforcement Officer, Central, Salem on 26-9-91. In that the Divisional Engineer, Telecommunications, Railway Electrification Project, Salem gave a reply dated 25-1-92 stating that they will consider the Petitioner's case in future depending upon the availability of vehicle. Subsequently, he made several

representations. But the Central Govt. did not consider the case fit for adjudication. At that time, the Petitioner was not in a position to submit records for the entire period of service and after issuing notice to the department on 12-12-94, the department has furnished the service certificate for the period from 11-1-88 to 2-9-90. Then again, the Petitioner took steps to file O.A. before the Central Administrative Tribunal. But, however, the advocate, who have been entrusted with the work has returned the papers to the Petitioner in the year 1998. Then again, the Petitioner raised an industrial dispute to which the Labour, Enforcement Officer, Salem returned the papers since the matter has already been conciliated and there is no provision to conduct conciliation proceedings for second time. Since the Petitioner entered into the service on 1-12-84 and was also in employment on 7-11-89 and worked for more than 240 days continuously in a period of 12 calendar months, the Respondent/Management ought to have granted temporary status and further regularised him in service. But, the Respondent/Management arbitrarily in violation of provisions of I. D. Act terminated the services of Petitioner. No order was issued to the Petitioner calling upon him to report for duty either as casual labour or casual driver. Even in letter dated 10-4-90, the Deputy General Manager, Telecom, Vellore asked the Petitioner to produce the original certificates including the casual mazdoor certificates regarding number of days worked etc. along with the licence for driving heavy vehicles. Because of the failure of Respondents in not issuing service certificate in time, the Petitioner was forced to loose the opportunity of applying for the post of driver. With regard to delay in raising the dispute is concerned, the same has been explained in conciliation petition dated 26-7-2004. Hence, the Petitioner raised this industrial dispute before the Regional Labour Commissioner, Central, Chennai and on the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Hence, the Petitioner prays that non-employment of the Petitioner from 2-9-90 is illegal, arbitrary and consequently direct the Respondent/ Management to reinstate him in service w.e.f. 2-9-90 and further direct the Respondent to pay arrears and back wages and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that it is false to allege that the Petitioner was employed from 1-12-84 to 10-4-85 in Railway Electrification Project. At that time, there was no such project office in the said Salem District. It is further false to say that he had worked continuously from 11-1-88 to 2-9-90 as a casual worker in a project taken up by the Respondent for railways and also no termination order was issued from Respondent office. In reply to Labour Enforcement Officer, Central, Salem the Respondent expressed its willingness to accommodate the Petitioner as casual mazdoor immediately and also offered its assurance in providing him as a casual driver post in future, depending upon the availability of number of vehicles allotted to the division. Even though the Labour Enforcement Officer took all measures to convince the Petitioner to accept the offer as casual labour, the Petitioner was not ready to accept the department's offer despite several reminders sent by Labour Enforcement Officer. It is false to allege that the juniors to him have been conferred with permanent status. There is no service certificate with the Petitioner that he entered into service on 1-12-84. The Petitioner has failed to report for duty from 2-9-90 onwards. There is no violation of any law as claimed by the Petitioner. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are —

(i) "Whether the action of the Respondent/ Management in terminating the services of Petitioner w.e.f. 2-9-90 is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No.1:—

6. The case of the Petitioner in this dispute is that he worked as a casual labour in Railway Electrification Project from 1-12-84 to 10-4-85 and subsequently, he was employed from 11-1-88 to 2-9-90 continuously for 803 days, but without regularising his services the Respondent/ Management has terminated his service w.e.f. 2-9-90. The Respondent/ Management has not followed the mandatory provisions of Section 25F of the I.D. Act and no notice of termination was issued to him and no notice of compensation was given to him. Any how, since the Petitioner entered into the service from 1-12-84 and since he was in employment from 7-11-89 to 2-9-90 and worked for more than 240 days in a continuous period of one year, the Respondent/Management ought to have granted temporary status and to regularise his services. But, they have not done so. Therefore, the termination is illegal void *ab initio* and the Petitioner prays for reinstatement with all back wages and consequential relief.

7. But, as against this, the Respondent contended that the Petitioner has not worked continuously from 11-1-88 to 2-9-90 as a casual worker. He was not appointed nor terminated by the Respondent/Management. Since he was appointed on casual and need basis he cannot claim any permanency or regularisation and the relief of reinstatement cannot be given to the Petitioner.

8. In order to establish his claim, the Petitioner examined himself as WW1 and produced 31 documents as Ex.W 1 to Ex. W31. On the side of the Respondent one Mr. Govindan, Divisional Engineer of Railway Electrification Project at Bangalore was examined as MW 1 and only one document namely EX.M 1 was marked through him.

9. Learned counsel for the Petitioner argued that the Petitioner was entered as a casual labour from 11-12-84 to 10-4-85 in Railway Electrification Project. Subsequently, he was employed from 11-1-88 to 2-9-90 for 803 days continuously. But, the Respondent/Management has not given certificate about his service and therefore,

regularisation was denied to the Petitioner. Furthermore, he was unceremoniously terminated from service on 2-9-90. After that the Petitioner filed O. A. No. 302/1991 before the Central Administrative Tribunal. Though the Tribunal has dismissed the application, it has directed the Petitioner to approach the labour authorities for his reinstatement. Even after several representations to the management, the Respondent/Management has not given the service certificate and only becausa of that the Respondent/Management refused to give a regular post of driver in the Respondent/Management. Only on the Advocate's default, the Petitioner was not able to file another application before Central Administrative Tribunal and he has raised the dispute in the year 2000. In the meantime, the Respondent/Management has regularised the services of the juniors of the Petitioner which is not valid. However, the Petitioner has completed 240 days in a continuous period of one year and therefore, the Respondent ought to have granted temporary status and subsequently they have to regularise his services. Since the mandatory provisions of Section 25F of the I.D. Act has not been followed, the termination is illegal, void and *ab initio*.

10. As against this, the learned counsel for the Respondent contended that the Petitioner has not been appointed hy the Respondent/Management. The Petitioner alleged that he was appointed only as a casual labour on contract basis. Therefore, in the absence of any appointment order and in the absence of appointment on regular basis, the Petitioner cannot claim any reinstatement or regularisation. Further, the allegation of termination and also reinstatement will not arise in this case. It is only engagement of the Petitioner on casual basis and disengagement. Further, in the telecom department, engagement of casual labour had been banned from 30-3-1985. Therefore, any engagement of casual labour thereafter is illegal or irregular and hence, the Petitioner cannot claim regularisation on the ground that he has worked for more than 240 days. Though the Petitioner has produced documents to show that he has worked for 803 days from 1-1-88 to 2-9-90, it is clear that he was engaged purely on temporary nature on leave vacancies and he has worked only in project work. The project work will be continued only for a period given to the project and he was disengaged after the project work was over. Therefore, for the disengagement or Petitioner after the completion of project, it cannot be said that he was terminated by the Respondent/Management. It is clear from the documents produced by the Petitioner that he was not engaged in any regular vacancies or has performed any regular work. Therefore, the Petitioner was engaged to do a specific work and on completion of the work assigned to him, he was disengaged by the department and his engagement comes to an end immediately where the necessity is over. Thus, the Petitioner has not produced any document to show that he was appointed by the Respondent/Management nor produced any document to show that he was terminated by the Respondent. Further, even when the Petitioner, has approached the labour authorities, at the first instance, the Respondent/Management has offered casual labour employment, but the Petitioner has refused to accept the employment just because there was no vacancy for the post of driver at that time due to reduction of vehicle. Further, the Respondent/Management has assured for considering him for the post of casual driver in case, if vehicles are given to the department. But, the Petitioner has not given any reply by writing or in oral before the conciliation officer accepting the Respondent's offer. Though under Ex. W7 namely service certificate given by the department, it is mentioned that the Petitioner has worked for 803 days from 1-8-88 to September, 1990, it is clear that he has worked only on leave vacancies and not worked in regular vacancies or regular post and therefore, this service certificate will not help the Petitioner in any way to prove that he was appointed by the Respondent/ Management. Further, it is well settled by the Supreme Court and High Courts that regularisation depends upon the substantive post available and as per seniority. With regard to reinstatement, the allegation of the Petitioner is only as casual labour on contract basis and in the absence of any appointment order and in violation of order by not following the directions as required under law, it cannot be said that the Petitioner is entitled for reinstatement and he relied on the rulings of Division Bench of the Madras High Court in W.P. No. 5215 to 5218 of 2000. Further, the learned counsel for the Respondent contended that even assuming for argument sake that the Petitioner was appointed by the Respondent/Management, it is clear that the appointment of the Petitioner was made subsequent to the ban imposed by the Central Government with regard to appointment of casual labour and therefore, the appointment made by a person who has no authority would be void and the appointment made in violation of mandatory provisions of statute or constitution shall also be void and for this he relied on the rulings reported in 2006 2 LLN 84 MADHYA PRADESH HOUSING BOARD AND ANOTHER *Vs.* MANOJ SHRIVASTAVA, wherein the employee was appointed on daily wages as a sub-engineer (civil). On the premise that his service may be terminated, he filed a Writ Petition before the High Court to consider his case in the light of the purported circulars issued by State Govt. for scrutiny of the daily rated employees and the Respondent/ Management held that since there was no vacancy nor sanctioned post, he was not appointed. When he approached the labour authorities, the Labour Court has allowed the application. The appeal preferred by the management before Industrial Court was also dismissed. The Writ Petition was also dismissed. When the matter came up before the Supreme Court, the Supreme Court has held that that the *"a person with a view to obtain the status of a 'permanent employee' must be appointed in terms of statutory Rules. A daily wager does not hold a post unless he is appointed in terms of the Act and the Rules framed thereon and he does not derive any legal right in relation thereto."* It further held that *"appointment*

made in violation of the mandatory provisions of statute or constitutional obligation shall also be void and if no appointment could be made in terms of the statute, such appointment being not within the purview of provisions of the Act would be void and he cannot be brought within the cadre of permanent employee." The next decision relied on by the learned counsel for the Respondent is reported in 2006 2 LLN 89 BRANCH MANAGER, MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LTD. AND ANOTHER wherein the Supreme Court has held that *"daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed thereunder and therefore, he does not derive any legal right.* Further, it held that *"if appointment was void being contrary to regulations applicable, procedural provisions like estoppel or waiver were not applicable."* The next decision relied on by the learned counsel for the Respondent is reported in CDJ 2006 SC 370 HARYANA STATE ELECTRICITY DEVELOPMENT CORPORATION *Vs.* MAMNI, wherein a temporary employee raised the dispute before Labour Court and the Labour Court directed to reinstate the employee that she has completed 240 days during the period of 12 months preceding her date of termination on the ground of non-compliance of provisions of Section 25F of the I.D. Act. When Writ was filed against that order by the management, it was also dismissed. On appeal, the Appellate forum modified the order and instead of reinstatement compensation of Rs.25,000/- was awarded. When the matter came up before the Supreme Court, if has held that *"relief of reinstatement with full back wages is not to be given automatically. Each case must be considered on its own merit. The changes brought about by subsequent decisions of this Court probably having regard to the changes in policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsaureing is evident. In view of the settled legal position as noticed herein before, we modify the impugned order by directing that the Respondent shall be compensated by payment of a sum of Rs. 25,000 instead of the order for re-instatement with back wages."* In a similar case, which is reported in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *Vs.* SOMVIR SINGH, wherein the Supreme Court has held that *"regularisation furthermore, is not a mode of appointment. If appointment is made without following the rules, the same being a nullity the question of confirmation of an employee upon the expiry of purported period of probation would not arise. The appointments of Respondent are illegal and they do not thus, have any legal right to continue in service."* Relying on all these decisions, the learned counsel for the Respondent contended that even in the cross examination, the Petitioner has admitted that no appointment order was issued to him and therefore, there will not be any question of termination. It is only engagement and disengagement as the project has commenced and ended and in this case, the Petitioner had clearly known the fact that he was appointed temporarily on leave vacancies and therefore, he must have known the consequences flowing from it. The Respondent/ Management is governed by service rules and no appointment could be made outside the service rules. In this case, the Petitioner was engaged only on need basis for temporary nature on leave vacancy. Since the appointment was made contrary to the circular issued by the Central Govt. without following the procedure and past practice is not always the best practice and if illegality has been committed as to how such illegality can be allowed to perpetuate the State and bound to take steps in accordance with law even in this behalf of Article 14 of Constitution of India will have no application. Under such circumstances, the Petitioner is not entitled to any relief as claimed by him.

11. I find much force in the contention of the learned counsel for the Respondent. But, in this case from Ex.W7, It is clear that the Petitioner has completed more than 240 days in a continuous period of 12 calendar months preceding to his termination or disengagement and it is also clear that the Respondent/Management has not followed the mandatory provisions of Section 25F of the I.D. Act. Even though it is argued that his appointment is not valid and while the ban was in force, he was appointed as casual labour, it is clear from the document Ex,W17 that he has worked for more than 240 days. Under such circumstances, though the Petitioner is not entitled to the relief of reinstatement with full back wages, I find he is entitled for compensation and justice would be prevailed, if the Petitioner is compensated by means of payment of Rs.15,000/- (Rupees Fifteen thousand only) by the Respondent/Management, instead of order of reinstatement with back wages. As such, I find the action of the Respondent/Management in terminating the services of the Petitioner though not justified, the Petitioner is not entitled to reinstatement, instead, he is entitled for compensation.

Point No. 2:—

The next point to be decided in this case is to what relief the Petitioner is entitled?

12. In view of my foregoing findings, I find the Petitioner is not entitled to the relief of reinstatement into service, instead he is entitled for compensation of Rs. 15,000 (Rupees Fifteen Thousand only) from the Respondent/Management. Ordered accordingly. No Costs.

13. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd September, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner : WW 1 Sri D. Ganesan

For the Respondent : MW1 Sri P. Govindan

Documents Marked :—

For the I Party/Petitioner :—

Ex. No.	Date	Description
W1	30-04-88	Xerox copy of the letter from AERE Warangal
W2	06-02-90	Xerox copy of the posting order.
W3	13-02-90	Xerox copy of the posting order
W4	22-02-90	Xerox copy of the extension order
W5	1990	Xerox copy of the certificate from Officer Engg. Cables
W6	11-04-90	Xerox copy of the certificate from Officer Engg. Cables.
W7	21-03-91	Xerox copy of the order in O. A. No. 302/91
W8	26-06-91	Xerox copy of the representation given by Petitioner
W9	10-01-92	Xerox copy of the representation given by Petitioner
W10	25-01-92	Xerox copy of the reply given by Respondent
W11	07-02-92	Xerox copy of the representation of Petitioner
W12	26-02-92	Xerox copy of the representation given by Petitioner
W13	04-11-92	Xerox copy of the letter from Labour Ministry
W14	16-09-93	Xerox copy of the representation given by Petitioner
W15	06-10-94	Xerox copy of the representation given by Petitioner
W16	28-11-94	Xerox copy of the lawyer's notice
W17	12-12-94	Xerox copy of the reply given by Respondent furnishing Service particulars of Petitioner
W18	17-12-94	Xerox copy of the notice
W19	12-07-00	Xerox copy of the representation given by Petitioner
W20	29-07-00	Xerox copy of the lawyer's notice
W21	11-11-00	Xerox copy of the representation of the Petitioner
W22	10-04-90	Interview letter of Respondent to Petitioner
W23	30-09-92	Xerox copy of the letter regarding temporary status
W24	April, 90	Xerox copy of the attendance register
W25	Nil	Form 2 filed before Central Administrative Tribunal by the advocate
W26	15-12-95	Xerox copy of the posting order issued to juniors
W27	22-02-00	Xerox copy of the 2A petition filed by Petitioner
W28	29-02-00	Reply given by LEO, Ministry of Labour, Salem
W29	Nil	Statement showing working particulars of Petitioner
W30	29-07-00	Xerox copy of the lawyer's notice to Respondent
W31	07-11-89	Xerox copy of the temporary status scheme of Respondent

For the II Party/Management :—

M1	27-08-92	Xerox copy of the failure of conciliation report

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4729.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 62/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-40012/15/2005-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4729.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-40012/15/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CNENNAI

Wednesday, the 23rd August, 2006

PRESENT

K. Jayaraman **Presiding Officer**

Industrial Dispute No. 62/2005

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of BSNL and their workmen)

BETWEEN

Smt. C. Suryakumari : I Party/Petitioner

And

1. The Superintending Surveyor of Works (Electrical) BSNL, Chennai. : II Party/Management
2. The Principal Chief Engineer (Electrical) BSNL, Chennai.

APPEARANCE

For the Petitioner : M/s. Balan Haridas & R. Kamatchi Sundaresan, Advocates

For the Management : Mr. D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-40012/15/2005-IR(DU) dated 21-07-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :—

"Whether the action of the management of BSNL, Chennai in dispensing with the services of Smt. C. Suryakumari is legal and justified? If not, to what relief the workman is entitled to?"

2. After the receipt of the reference, it was taken on file as I.D.No. 62/2005 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was employed to do sweeping and cleaning work in the Respondent/Management, when it was called as Department of Telecommunication from 9-8-1991 and she had been working continuously. Subsequently, it was taken over by BSNL and the office which was originally at Alwarpet was transferred to Ethiraj Salai, 5th Floor, Chennai-105. The Petitioner was paid daily wages on monthly basis. From 1-11-95 to 25-4-99 the Respondent have been terming the Petitioner to be contract labour by entering into a farce of contract with the Petitioner. The work discharged by the Petitioner remained the same even though the same to be on contract basis. As such, the terminology contract was introduced only to over reach the statutory and welfare labour legislation. But the supervision and control on the work of the Petitioner was with the Respondent. After 25-4-99 the so called contract was also discontinued and the Petitioner was informed that she will be engaged as and when basis. But, even after 25-4-99 the Petitioner was continuously working under the Respondent/Management without any break. But, she had been made to receive wages on fictitious names namely Kalai, Surya, Mala Kumari, Geetha and Sudha and even though the names are different, the Petitioner had been working continuously on the aforesaid names and receiving wages by signing the concerned register. The Respondent has been making the Petitioner to work in this manner, just to deny the benefit of regularisation and when the Petitioner raised dispute before the conciliation officer, the Respondents discontinued the services of the Petitioner. One Mr. P. Murugan, G. Ravi and L. Rajesh, who were juniors to the Petitioner and were appointed much later to the Petitioner have been regularised and they are working as permanent employees. On the other hand, the Respondent was making the Petitioner to work on fictitious names and finally they have terminated the service of the Petitioner. The 1st Respondent by its letters dated 27-12-2001 and 19-9-2002 and finally on 26-6-2003 had recommended for the absorption and regularisation of the services of Petitioner. The Petitioner has become victim of organisational bifurcation. Thus, the Respondent orally stopped the work of the Petitioner when she raised the dispute before conciliation officer on and from 24-6-2004. The Petitioner had worked for more than 240 days in a continuous period of 12 calendar months immediately before her termination. Further, she has also completed 480 days in a continuous period of 24 calendar months and she has deemed to have confirmed in the service of the Respondent in view of the provisions under Tamil Nadu Industrial Establishment (Confirment of Permanent Status to Workmen) Act, 1981. Therefore, the action of the Respondent/Management in terminating the services of the Petitioner without giving any notice nor paying any compensation is unjust and illegal. The act of the Respondent/Management is also an unfair labour practice. Hence, for all these reasons, the Petitioner prays to pass an award for reinstatement with full back wages and continuity of service and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that Department of Telecommunication has issued instructions on 30-3-1985 barring the employment of Casual Labourers and as per the Department of Telecommunication letter dated 7-11-89, only full time Casual Labourers are entitled to be conferred with TSM status if they had been engaged prior to 30-3-1985 and this cut off date was subsequently extended to 22-6-1988 by taking into account various aspects and consideration prevailing at that time. The Petitioner has served only for broken periods as a casual employee mostly on part time between 1991 and 1995 which was also not in accordance with the employment policy considerations of the Directorate. Further, the DoT has sent a communication with a clarification dated 18-11-88 that part time casual labourers who had rendered service of at least 240 days per year for four years prior to 31-3-87 alone could be considered for regularisation and in the said communication, it is further clarified that initial entry should have been prior to 1-4-80 and under such circumstances, the Petitioner's services cannot be considered for regularisation. The Petitioner never been in the employment for a continuous period of 240 days and even if it is to be contended that her services were utilised for such a continuous period, it is not possible to regularise the services of any person in contravention of the recruitment rules and the departmental instructions. The system of recruitment of conservancy staff under DoT was

discontinued in a phased manner and it was entrusted to contractors by inviting competitive bids and the short period of engagement of Petitioner has been only in such a capacity as a contract labour. Further, the Petitioner cannot compare herself to the cases of P. Murugan, G. Ravi and L. Rajesh and the said persons have approached the Chennai Bench of Central Administrative Tribunal in O. A. Nos. 429, 433 and 434/1999 which had recorded its observation with regard to the condition and also advised the department that whenever regular recruitment is made for Group D posts, preference can be shown to the applicants. Further, though the Supreme Court was taking a lenient view with regard to the regularisation, recently the Supreme Court has held that "no person should be allowed to enter by back door method and that Courts and Tribunals should not order regularisation as a matter of course." Regularisation of the services of employee can be considered only in cases, where initial engagement has been as per the recruitment rules and the relevant instructions of the department. Therefore, the so called disengagement of the services of the Petitioner from 24-6-2004 cannot be regularised at all and in the manner of engagement of Petitioner contrary to recruitment rules cannot be a ground for seeking regularisation of her service. Hence, for all these reasons the Respondent prays that the claim may be dismissed with costs.

5. Again, the Petitioner in her rejoinder contended that it is not correct to say that Petitioner was not continuously employed from 1990 onwards. The Petitioner was engaged continuously from 9-8-91 under different fictitious names. The Respondent has engaged the Casual Labour even after 1989 and they have regularised the services of Sri P. Murugan, G. Ravi and L. Rajesh and also similar such persons. Therefore, they cannot deny the said benefit of regularisation to the Petitioner on the ground that she has not worked for full time and she had worked only for broken period. The Petitioner has worked only as a full time employee. The Respondent made contradictory statements just to deny the benefit of regularisation to the Petitioner. The Respondent cannot distinguish between similarly situated persons by giving one set of employees regularisation and deny the same to the Petitioner, who is also similarly situated like three employees mentioned above. For the post of sweeper, they need not be sponsored through Employment Exchange as the provisions of Employment Exchange Compulsory Act would not apply to the class IV employment. Hence, the Petitioner prays for an award in her favour.

6. In these circumstances, the points for my consideration are —

(i) "Whether the action of the Respondent/ Management in dispensing with the services of the Petitioner is legal and justified?

(ii) To what relief the Petitioner is entitled?"

Point No.1:—

7. The case of the Petitioner in this dispute is that she was appointed as sweeper cum cleaner in the Respondent/Management even in the year 1991 and she was doing the said work continuously and she has completed for more than 240 days in a continuous period of 12 calendar months and 480 days in a continuous period of 24 calendar months and therefore, she is entitled to the benefit under the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. On the other hand, the Respondent/ Management without giving any notice nor compensation terminated her service orally on 24-6-2004 which is illegal and void ab initio and therefore, she prayed for reinstatement with all consequential benefits. The Petitioner examined herself as WW1 and produced Ex.W1 to W69 and on the side of the Respondent one Mr. Muralidharan, who is working as Sub Divisional Engineer was examined as MW1 and on the side of the Respondent, it is alleged that the Petitioner was engaged during exigencies and she has served only as a sweeper for broken periods as casual employee mostly on part time basis and therefore, she is not entitled to claim any relief much less reinstatement.

8. Learned counsel for the Petitioner contended that though the Respondent/Management denied that the Petitioner has never worked continuously and alleged that she worked as a part time employee from Ex.W1 to W60 which are copies of receipts for payment of wages to the Petitioner, it is clear that the Petitioner has worked only as a full time employee and she was also employed from the year 1991. Though there is a gap from the year 1995 to 1999, it is only due to Respondent's fault and not the fault of the Petitioner. It is further contended on behalf of the Petitioner that even from Ex.W61 which is a statement of number of days worked by the Petitioner given by the Respondent/Management that during April, 1994 to March, 1995. The Petitioner has worked for more than 240 days and therefore, it is false to allege that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months. Further, even the Surveyor of Works namely the 1st Respondent has recommended the Petitioner's regularisation in the letter under Ex.W67 and Ex.69 and even in that letters, it is clearly stated that the Petitioner has worked from the year 1991 and the department has regularised the services of three other persons who are juniors to the Petitioner. It is the further contention of the learned counsel for the Petitioner that juniors namely Mr. P. Murugan, Mr.Ravi and Mr. Rajesh who were appointed as sweepers subsequent to the appointment of the Petitioner and they were also terminated by the Respondent/Management and when they have filed O.A. before the Central Administrative Tribunal, on the direction of the Central Administrative Tribunal, Chennai Bench, the Respondent/Management has regularised the services of the aforesaid three persons and since the Petitioner has not filed any O.A. before the Central Administrative Tribunal, due to her poverty, she has not been considered for regularisation. Under such circumstances, the action

taken by the Respondent/Management amounts to unfair labour practice. It is further contended on behalf of the Petitioner that though the Petitioner has worked for more than 240 days in a continuous period of 12 calendar months, the Respondent has not issued any notice of termination nor paid compensation and therefore, the Respondent has not complied with the mandatory provisions of Section 25F of the I.D. Act and the action taken by the Respondent/ Management is illegal and void *ab initio*. It is the further argument of the learned counsel for the Petitioner that even though the Petitioner has been continuously working she had been made to receive wages in the fictitious names namely Kalai, which is the Petitioner's daughter's name, Mala, which is the Petitioner's sister name, Surya, first portion of the Petitioner's name, Kumari, later part of the Petitioner's name, Geetha and Sudha. Even though the names are different, the Petitioner has been working continuously on the aforesaid names and received wages by signing the concerned register and the Respondent/ Management had been making the Petitioner to work in this manner just to deny the benefit of regularisation and when she raised the dispute before labour authorities, the Respondent/Management discontinued the services of the Petitioner which amounts to retrenchment and as such she is entitled to the benefits under I.D. Act.

9. In order to establish that the Respondent has regularised services of Sri P. Murugan and others, the Petitioner produced Ex.W63 which is the copy of order in O.A. No.429/99 and connected matters and she has also produced copy of the order appointing Sri G. Ravi and other as Ex.W64. Learned counsel for the Petitioner contended that Respondent/Management has violated the provisions of Section 25F, 25G and 25H of the I.D. Act and further the action of the Respondent/Management in regularising the far more juniors and terminating the services of the Petitioner amounts to discrimination.

10. As against this, the learned counsel for the Respondent contended that in this case, the Petitioner has not been appointed for regular post and it is only an engagement and disengagement. The Department of Telecommunication banned the appointment of casual labour even from 30-3-1985. Therefore, any appointment of casual labour thereafter, is illegal and cannot be regularised. Since the Petitioner was engaged during the ban on engagement, any such engagement would only be illegal and he relied on the rulings reported in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *Vs.* SOMVIR SINGH. Learned counsel for the Respondent further contended that though the Petitioner contended that her juniors namely S/Sri P. Murugan, Ravi and Rajesh were regularised in their posts, the fact remains that the persons referred to above had approached the Central Administrative Tribunal and they were appointed as Group D employees. But this happened in the year 2000 and now the law on regularisation had undergone a tremendous change. The Supreme Court has held that there is no fundamental right in those who have been employed on daily wages or temporarily or on a contractual basis. The claim that they have right to be absorbed in service cannot be said to be holders of posts since regular appointment would be made by making appointment consistent with the requirements and the right to be treated equally with other employees employed on daily wages cannot be extended to a claim for equal treatment with those who were regularly employed would be treating unequal as equals. The daily wager cannot claim permanency since they have no enforceable right for claiming absorption and there is no corresponding obligation on the state to make them permanent. Further, he relied on the rulings reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA & OTHERS *Vs.* UMA DEVI, wherein the Supreme Court has held that *" Courts are not justified in granting directions for and for stay of regular recruitment process at the instance of persons who were employed on temporary, contractual, casual, daily wages, ad.hoc etc."* It further held that *merely consider equity for the handful of people who have approached the Court with a claim while ignoring equity for the teeming millions seeking employment and a fair opportunity for competing for employment."* It also advised that *"Courts must be careful in ensuring that they do not interfere unduly with the economic/financial arrangement of the affairs of the State of its instrumentalities."* Learned counsel for the Respondent further contended that while the Petitioner was engaged as sweeper, she must have known her employment and also consequences flowing from it. In the Respondent/Management the recruitment to various posts of Group D to Group A is governed by the service rules and no appointment could be made out against the service rules and even assuming such appointments can be made, the same cannot be bestowed with the claim of permanency. With regard to contractual appointment, it comes to amend at the end of contract, an appointment on daily wages or casual basis comes to an end when it is discontinued and a temporary appointment comes to an end on the expiry of its term. Therefore, it is not within their authority or power even to engage casual labour, particularly when the ban on recruitment is in force. Since the Petitioner had alleged that she has been appointed as sweeper after the cut off date namely 30-3-1985, her engagement is illegal and no credence can be given, since her engagement itself is contrary to rules.

11. The next contention of the learned counsel for the Respondent is that though the Petitioner alleged that controlling officer had recommended for her regularisation, it cannot be a valid contention because that by itself will not give any right to the Petitioner and he relied on the rulings reported in 2006 2 LLN 89 BRANCH MANAGER, MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LTD. AND ANOTHER *Vs.* S.C. PANDEY wherein the Supreme Court has held that *"if an appointment is made contrary to the provisions of statute the same would be void and effect thereof would* be that no legal right could be derived by the employee by

reason thereof". It has further held that "regularisation is not a mode of appointment and if an appointment is made without following rules the same being nullity, the question of confirmation does not arise and they have no right to continue in service". Learned counsel further contended that no doubt, some of the juniors of the Petitioner were absorbed in the Respondent/Management, but it was made in the year 2000. The past practice should not be followed always, as the past practice is not the best practice always. Unless the Petitioner is able to show independently that she had right of absorption, it is not open to rely on the past cases since the appointments in the past are made without following the rules, therefore, *void ab initio* and no right flows out of such employment. Learned counsel for the Respondent further relied on the rulings reported in 2006 4 SCC 1 wherein the Supreme Court after laborately discussing the earlier decisions of Supreme Court and held that "Supreme Court is not only constitutional Court, it is also highest court in the country, the final court of appeal. By virtue of Article 141 of Constitution, what the Supreme Court lays down is the Law of land and its decisions are binding on all Courts. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution.....". "The Supreme Court had an occasions issued directions which could not be said to be consistent with the Constitutional Scheme of public employment, such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The question arises equity to whom? Equity for the handful of people who have approached the Court with a claim or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any Court of Law or Justice is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It further held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Relying on these decisions, learned counsel for the Respondent contended that mere completion of 240 days of continuous service that by itself would not confer any legal right to be regularised in service. The daily wager like the Petitioner does not hold any post as she is not appointed in terms of rules and does not derive any legal right and any appointment dehors the rules is illegal and *ab initio void* and cannot be regularised even in cases where the person had worked for a considerable period. It is the further contention of the learned counsel for the Respondent that merely because in the post some persons appointed have been regularised that cannot be said to be the normal mode which must receive the seal of the Court. He further relied on the rulings reported in STATE OF UTTER PRADESH *Vs.* NEERAJ AWASTHI 2006 1 LLN 817 which was followed in the decision reported in 2006 2 LLN 84 MADHYA PRADESH HOUSING BOARD & ANOTHER *Vs.* MANOJ SHRIVASTAVA wherein the Supreme Court has held that "when the initial engagement is illegal any amount of continuation will not confer any legal right on the employee and in such cases, the employee cannot contend and invoke provisions of I.D. Act." It is his further contention that even in cases, where the employee was issued with order of appointment, the Supreme Court has held in BRANCH MANAGER, MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LTD. Vs. S.C. PANDEY 2006 2 LLN 89 that "when the appointment was illegal, the employee derives no legal right to continue in employment. The Supreme Court further held that "in such type of cases, the Court should never order reinstatement" and it further held that "principle of estoppel cannot be raised when the appointment was illegal and void." Learned counsel for the Respondent further argued that in this case the Petitioner was never appointed against regular post in the department. Unless a person is issued with appointment order appointing him against the sanctioned post after following the recruitment process in accordance with the service rules applicable, no right is accrued to the Petitioner. He further relied on the rulings reported in (2006) 4 SCC 1 wherein the Supreme Court has held that "any back door entry in public employment is not permissible. It has also held that "even in case of employees who were in employment continuously, regularisation is impermissible." He further argued that in view of the decisions of Constitutional Bench reinstatement in this case cannot be ordered.

12. But, as against this, learned counsel for the Petitioner contended that in this case, the Petitioner has not prayed for regularisation and she wants only reinstatement, since the Respondent/ Management has not followed the provisions of Sections 25F, 25G and 25H of the I.D. Act. Under such circumstances, though the Supreme Court has held in number of decisions that regularisation is not a mode of appointment, since the Petitioner has not claimed for regularisation and only claimed for reinstatement, this Court has got every power to reinstate the Petitioner into service.

13. Though, I find some force in the contention of the learned counsel for the Petitioner, since the Supreme Court in CDJ 2006 SC 370 HARYANA STATE ELECTRONICS DEVELOPMENT CORPORATION *Vs.* MAMNI and CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR *Vs.* SURINDER KUMAR held that

"appointment of workman was not in sanctioned post and being a State within the meaning of Article 12 of Constitution of India, the appellant for the purpose of recruiting its employees, was bound to follow its recruitment rules and any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles I4 & 16 of Constitution of India would be void in law and in that case, the Supreme Court has also held that 'the Respondent was appointed in violation of Rules and therefore, it reversed the orders passed by the lower Courts and held grant of monetary compensation would sub-serve the interest of justice." Further, the Supreme Court has held that though in number of decisions, the Supreme Court has categorically held that relief of reinstatement with full back wages is not to be given and each case has to be considered on its own merits. ....The changes brought about by the subsequent decisions of this Court probably having regard to the changes in policy decision of Govt. in the wake of prevailing market economy, globalization and outsourcing in event. In view of the settled legal position, we modify the impugned order by directing that the Respondent shall be compensated by payment of a sum of Rs.25, 000/ - instead of the order for reinstatement with back wages." Therefore, in view of the recent decisions of Supreme Court and in view of the evidence given in this case, as the Petitioner was not appointed for the regular vacancy and she was engaged only as a casual labourer on temporary basis, I find though she was engaged for more than 240 days in a continuous period of 12 calendar months, she is not entitled to claim reinstatement and I find she shall be compensated by payment of Rs.10,000/- instead of the order of reinstatement with back wages.

Point No.2:—

The next point to be decided in this case is to what relief the Petitioner is entitled?

14. In view of my foregoing findings, I find the Petitioner is not entitled to reinstatement with back wages, instead she will be compensated by payment of a sum of Rs. 10,000/- (Rupees Ten thousand only) as compensation. Ordered accordingly. No Costs.

15. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me In the open Court on this day the 23rd August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examind :—

For the Petitioner : WW1 Smt. C. Suryakumari

For the Respondent : MW1 Sri. N. Muralidharan

Documents Marked :—

For the I Party/Petitioner :—

Ex. No.	Date	Description
W1	03-12-91	Xerox copy of the receipt
W2	02-01-92	Xerox copy of the receipt
W3	03-02-92	Xerox copy of the receipt
W4	02-03-92	Xerox copy of the receipt
W5	03-04-92	Xerox copy of the receipt
W6	04-05-92	Xerox copy of the receipt
W7	02-06-92	Xerox copy of the receipt
W8	07-07-92	Xerox copy of the sanction memorandum
W9	July, 92	Xerox copy of the sanction memorandum
W10	01-10-92	Xerox copy of the sanction memorandum
W11	02-11-92	Xerox copy of the sanction memorandum
W12	01-12-92	Xerox copy of the sanction memorandum
W13	01-01-93	Xerox copy of the sanction memorandum
W14	01-02-93	Xerox copy of the sanction memorandum
W15	02-03-93	Xerox copy of the sanction memorandum
W16	02-04-93	Xerox copy of the sanction memorandum
W17	03-05-93	Xerox copy of the sanction memorandum
W18	01-06-93	Xerox copy of the sanction memorandum
W19	02-07-93	Xerox copy of the sanction memorandum
W20	03-08-93	Xerox copy of the sanction memorandum
W21	01-09-93	Xerox copy of the sanction memorandum
W22	01-10-93	Xerox copy of the sanction memorandum
W23	01-11-93	Xerox copy of the sanction memorandum
W24	01-12-93	Xerox copy of the sanction memorandum
W25	31-12-93	Xerox copy of the sanction memorandum
W26	01-02-94	Xerox copy of the receipt
W27	01-03-94	Xerox copy of the receipt
W28	05-04-94	Xerox copy of the receipt
W29	02-05-94	Xerox copy of the receipt
W30	01-06-94	Xerox copy of the receipt
W31	01-09-94	Xerox copy of the receipt

Ex. No.	Date	Description
W32	Oct., 94	Xerox copy of the wage payment extract
W33	01-11-94	Xerox copy of the receipt
W34	01-12-94	Xerox copy of the receipt
W35	Feb., 95	Xerox copy of the wage payment extract
W36	March, 95	Xerox copy of the wage payment extract
W37	April, 95	Xerox copy of the wage payment extract
W38	May, 95	Xerox copy of the wage payment extract
W39	June, 95	Xerox copy of the wage payment extract
W40	July, 95	Xerox copy of the wage payment extract
W41	August, 95	Xerox copy of the wage payment extract
W42	Sept. 95	Zerox copy of the wage payment Extract
W43	Oct.95	Xerox copy of the wage payment extract
W44	Nov. 95	Xerox copy of the wage payment extract
W45	Dec. 95	Xerox copy of the wage payment extract
W46	01-02-99	Xerox copy of the receipt
W47	31-03-99	Xerox copy of the receipt
W48	03-05-99	Xerox copy of the receipt
W49	Nil	Xerox copy of the wage payment extract for the Period from October, 2000 to Sep. 2003
W50	18-03-02	Xerox copy of the receipt
W51	19-07-02	Xerox copy of the receipt
W52	21-08-03	Xerox copy of the receipt
W53	25-07-03	Xerox copy of the receipt
W54	01-08-03	Xerox copy of the receipt
W55	28-10-03	Xerox copy of the receipt
W56	31-10-03	Xerox copy of the receipt
W57	21-11-03	Xerox copy of the receipt
W58	Nil	Xerox copy of the receipt for Feb. 2004
W59	Nil	Xerox copy of the receipt for March, 2004
W60	Nil	Xerox copy of the receipt for May, 2004
W61	Nil	Xerox copy of the statement of No. of days Worked by Petitioner
W62	18-12-95	Xerox copy of the notice of 1st Respondent
W63	22-11-99	Xerox copy of the order in O. A. No. 429/99
W64	12-09-00	Xerox copy of the appointment order of Ravi & Two others
W65	20-12-00	Xerox copy of the representation of Petitioner
W66	26-12-01	Xerox copy of the representation of union
W67	16-09-02	Xerox copy of the letter of Surveyor of Works
W68	13-96-03	Xerox copy of the representation of Petitioner
W69	26-06-03	Xerox copy of the letter of Surveyor of Works

For the II Party/Management :—

Ex. No.	Date	Description
M1	Nil	Letter of authorization filed by MW1

नई दिल्ली, 13 नवम्बर, 2006

का.आ 4730.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 3/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था ।

[सं. एल-40012/65/2004-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4730.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 13-11-2006.

[No. L-40012/65/2004-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CNENNAI

Wednesday, the 27th September, 2006

PRESENT

K. Jayaraman **Presiding Officer**

Industrial Dispute No. 3/2005

[In the matter of the dispute for adjudication under clause (d) of Sub-section (I) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Telecom BSNL and their workmen]

BETWEEN

Sri S. Saravanan : I Party/Petitioner

And

The General Manager. Telecom, BSNL, Karaikudi : II Party/Management

APPEARANCE

For the Petitioner : M/s. P. V. S. Giridhar Tess Advocates

For the Management : M/s. P. Arulmudi & P. Srinivasan, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No.L-40012/65/2004-IR(DU) dated 25-11-2004 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :—

> "Whether the claim of Sri S. Saravanan for reinstatement with continuity of service and back wages against the management of BSNL, Karaikudi is legal and justified? If not, to what relief the workman is entitled?"

2. After the receipt of the reference, it was taken on file as I.D. No. 3/2005 and notices were issued to both the parties and they have entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner entered into the service in the telegraph office under the department of telecommunication as a messenger on casual basis in the year 1991. From the year 1995, the Petitioner was entrusted with additional works of sweeping, cleaning, drawing water etc. The Petitioner worked from 5.00 AM to 7.00 PM and he worked continuously from the year 1995 without any break whatsoever. The work entrusted to the Petitioner is of perennial in nature and is ordinarily carried out by the regular employees of the Respondent department. Subsequently, the Petitioner made various representations to the Respondent requesting him to regularise his services, but the Respondent in the year 1998 has terminated the Petitioner from service and after various requests made by the Petitioner, he was taken back into service on the next day. Then the Petitioner filed O.A.No. 504/98 before the Central Administrative Tribunal, Chennai for regularisation of his services. The Central Administrative Tribunal by its order dated 22-11-99 directed the Respondent to dispose of the representation made by the Petitioner dated 12-6-96 and 6-10-97 in accordance with the law. But in Respondent mechanically passed an order on 24-1-99 rejecting the claim of the Petitioner and denied the benefits of regularisation and they held that relationship of Petitioner with the department is only at the level of contractor for supply of contract labour. From the year 1999 onwards, the authorities of the Respondent forced the Petitioner to sign on salary receipt in different names. This practice was resorted by them in order to mislead this Court and also to defeat the claim of the Petitioner. While so, to the Petitioner's shock and surprise his services was orally terminated by the Respondent on 13-2-2002. The action of the Respondent in terminating the services of the Petitioner is in violation of provisions of I.D. Act particulars Section. 25F, 25G and 25H thereof. The Respondent has not issued any notice paid any compensation. Therefore, the order of termination is clearly arbitrary, unreasonable, and violative of principles of natural justice and it is void, ab initio. Further, the juniors of the Petitioner namely S/Sri Sivanesan, Marimuthu and Kanniah have been retained in service, which is a clear violative of rights of Petitioner under Artiele 14 and 21 of the Constitution. Though the Respondent alleged that he was employed on contractual basis, no such contract labour system was in force in the department. His work was directly supervised by the JTO under whom he worked. Further, the Respondent did not hold any valid lieence to employ as a contractor under Contract Labour (Regulation & Abolition) Act. Henee, he raised an industrial dispute before Assistant Labour Commissioner (Central) and on its failure, the matter was referred to this Tribunal. Therefore, the Petitioner prays this Tribunal to hold the termination of Petitioner by the Respondent as illegal and an award may be passed directing the Respondent to reinstate the Petitioner into service with all baek wages, eontinuity of services and all consequential benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner was not engaged by them on casual basis but only on eontract basis for eontingent work for short spells. The Petitioner did not perform any regular work as claimed by him nor was there any control exerted over him. The Petitioner worked as a eontract labour and therefore, giving regular work or permanent work did not arise. The officers referred by him were not appointing authority and no post was filed up by them. The Central Administrative Tribunal, Chennai Bench only directed this Respondent to dispose of his representation and it was implemented with the rules it is false to allege that the Petitioner signed in vouchers in

different names. There was no termination as alleged by the Petitioner and when there was only a contractual engagement, the need for termination by the Respondent does not arise at all. It is false to allege that the Respondent indulged in unfair labour practice, but acted only in accordance with rules. The Petitioner wants to gain back door entry under the pretext of claiming reinstatement. The allegation regarding retention of juniors is not admitted. Since the Petitioner was only a contract labour, his contention is incorrect. The posts in BSNL are governed by rules and regulations and they cannot be violated and hence, the petition is misconceived. Further, the Petitioner ought to have impleaded the contractor as Respondent who alone could be able to tell the correct position relating to the engagement of workers. Hence, the Respondent prays that the claim may be dismissed with costs.

5. Again, the Petitioner in his rejoinder contended that it is false to allege that the Petitioner was engaged only as a contract labour. The Petitioner has been employed directly under the Respondent and rendered a continuous service of ten years and worked as per the instructions given by his higher authorities and the work performed by the Petitioner is of perennial in nature. The Petitioner further denies that contract labour system is prevailing in the department. Therefore, the so called contractor is sham. Even assuming without admitting that there is a contract labour system, it is only sham and the Petitioner was not engaged by such alleged contract labour system. Hence, the Petitioner prays that an award may be passed in his favour.

6. In these circumstances, the points for my consideration are —

(i) "Whether the claim of the Petitioner for reinstatement with continuity of service and back wages against the Respondent/ Management is legal and justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No.1:—

7. The case of the Petitioner in this dispute is that he entered into the services of telegraph office as a messenger on casual basis in the year 1991. From the year 1995, he was entrusted with the additional work of sweeping, cleaning, drawing water etc. He worked from 5.00 am to 7.00 pm and he has worked continuously from 1995 without any break which work is perennial in nature. While so, all of a sudden, the Respondent/Management has terminated his services from 13-2-2002 which is illegal, *void ab initio.*

8. As against this, the Respondent contended that he was not appointed and he was engaged only on contract basis for contingent work for short spells. He did not perform any regular work as claimed by him and there is no control exhibited by the Respondent over him. Therefore, giving regular work or permanent work did not arise.

9. In order to substantiate his claim, the Petitioner examined himself as WW1 and produced Ex.W1 to W28 and also examined one Mr. Nagendran as WW2 as an employee in the Respondent/Management. According to him, W1 series are copies of vouchers from the year 1992 to 1995 with regard to payment of coolie for delivery of messages. Ex. W2 is the copy of payment of wages for sweeping and for fetching drinking water. Ex. W3 series are copy of receipts for messenger delivery receipts. Ex. W 4 is the copy of cash book register prepared by him. Ex.W5 is the copy of representation for regularisation given by him. Ex.W6 is the copy of order of Central Administrative Tribunal on the O.A. filed by him. Ex. W7 is the copy of order rejecting the claim of the Petitioner for regularisation. Ex.W8 series is the messenger delivery receipt signed by him in different names. Ex.W9 is the copy of duty memo given by JTO. Ex. W 10 and W 12 are copies of receipt for payment of Rs. 60 and Rs. 40 for the work he has done as a waterman. Ex. W 11 is the copy of wage receipt. Ex. W 13 is the copy of instructions to send money order. Ex. W 14 is the copy of delivery receipt. Ex. W 15 is the copy of instructions to receive fax machine given to him. Ex.W16, W 17, W21, W23 and W24 are copy of wage receipts. Ex. W27 is the copy of receipt for donation collected from employees. Ex.W28 is the copy of representation given by him to increase his wages. On the other hand, on the side of the Respondent/ Management one Mr. T. Palanichamy was examined as MW1 and on their side three documents were marked as Ex. M1 to M3.

10. On behalf of the Petitioner, it is contended that the Petitioner has completed more than 240 days in a continuous period of 12 calendar months before his termination and no notice of termination was issued to him nor any compensation was made by the Respondent/ Management and they have not followed the mandatory provisions of Section 25F of I.D. Act. It is further contended that though the Respondent contended that he has employed on contract basis, no contract system was in vogue in the Department of Telecommunication during that period. Though in the receipts it is mentioned that Petitioner has worked as a contractor, it is only to deny the rights of the Petitioner and he further relied on the rulings reported in 1969 LAB IC 362 and also AIR 1957 SC 264 DHARANGADHRA CHEMICAL WORKS *Vs.* STATE OF SAURASHTRA AND OTHERS wherein the Supreme Court while dealing with the distinction between the workman and independent contractor held that *"the broad distinction between a workman and independent contractor lies in this that while the former agrees himself to work, the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is therefore, a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status."*

In 1969 LAB IC 362 KANDAWAMI WEAVING FACTORY *Vs.* REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, MADRAS wherein the Supreme Court has held that *"where therefore, in a handloom as well as power loom factory the master had a voice in the selection of goods to be manufactured as well as its quality and had also provided that the work should be done in his own premises by the workers, it was a contract of service and not a contract for service and the provisions of Employees State Insurance Act were attracted, even though they might be paid at a piece rate basis."* Relying on these decisions, learned counsel for the Petitioner contended that though the Respondent alleged that the Petitioner is only employed on contract basis, the Petitioner is a workman and is entitled to the benefits of I.D. Act. He further contended that from the documents produced by the Petitioner, it is clearly established that he has worked for more than 240 days in a continuous period of 12 calendar months and without following the mandatory provisions of Section 25F of the I. D. Act, the Respondent has terminated the services of the Petitioner which is illegal and void *ab initio.*

11. But, as against this, learned counsel for the Respondent contended that in this case, the Petitioner has not alleged any appointment under Respondent/ Management and he admits that he was not appointed and no order of appointment was issued to him and therefore, the question of reinstatement, continuity of service and back wages does not arise at all. He was only appointed as contract labour and the contractor engaged on need basis. It is only engagement and disengagement. In the Department of Telecommunication engagement of casual labourers had been banned from 30-03-1985, therefore, any appointment thereafter, is illegal and cannot be regularised and since the Petitioner was engaged during the ban on engagement, such engagement is only illegal and he relied on the rulings reported in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS *Vs.* SOMVIR SINGH, wherein the Supreme Court has held that *"Order of ban suggests that if any appointment was to be made due to exigencies of work, the approval of Director (Finance) or Managing Director was to be obtained and the paper routed in respect thereof should be through the Corporate Office. The General Manager by no stretch of imagination could accord approval for appointment. Further, the regularisation is not a mode of appointment and if appointment is made without following the rules, the same being a nullity the question of confirmation of an employee upon the expiry of purported period of probation would not arise. The appointments of Respondent are illegal and they do not thus, have any legal right to continue in service."* Relying on this decision, learned counsel for the Respondent contended that the case of the Petitioner in this dispute is that he has entered into the service as messenger and subsequently, he was entrusted with the additional work of sweeping and cleaning and he has also done other works entrusted to him and he has continuously worked in the Respondent/Management. But, the Respondent contended that the Petitioner was engaged only on contract basis since the same is illegal, the Petitioner is not entitled to any relief. Further, unless a person who is appointed in accordance with rules, the very engagement itself is illegal. From Ex.M1 & M2 it is clear that the Petitioner himself has entered into an agreement for contract for the work done by him, therefore, he cannot go back on that. Though he alleged that it was obtained by coercion and undue influence, the same is an afterthought and made only for the purpose of this case and he cannot go back on that document. It is the clear case of the Petitioner that he was not appointed after following the procedure of recruitment and no order of appointment was issued to him. Though he examined WW2 an employee of the Respondent/Management, who has given evidence that he has introduced the Petitioner to the department, but he has not produced any authority to show that the Respondent/Management has authorised him to recommend the name of the Petitioner to the department and therefore, his evidence is of no use to the Petitioner. It is evident that from 1-10-2000 onwards BSNL was formed and makes its own recruitment. It is also evident that the Petitioner was engaged on casual basis during the ban. Furthermore, the category to which the Petitioner was engaged was not a prohibited category under Contract Labour (Regulation & Abolition) Act notification. Since his engagement itself is illegal, the Petitioner cannot seek any permanency or reinstatement and as such his claim is illegal. Learned counsel for the Respondent further contended that the Petitioner cannot be regularised or reappointed or reinstated since he has not come through normal channel of recruitment in the Respondent. The permanent post in the Respondent/Management is only filled up in accordance with the rules and regulations of management from time to time. Since the Respondent/ Management has not appointed the Petitioner in question with any recruitment rule, the question of seeking reinstatement will never arise at all. He further relied on the rulings reported in 2001 II LLJ 1087 in the case of STATE AUTHORITY OF INDIA and argued that though the Petitioner contended that he was not a contract employee and he is entitled to reinstatement, it is contrary to the ratio of the judgment in SAIL case, wherein the Supreme Court has held that *"there is no specific provision made for automatic absorption of contract labour by principal employer in concerned establishment on the issue of notification prohibiting employment of contract labour. Further, absorption of contract labour is not concomitant to abolition notification issued by the appropriate Govt. under section 10 of the Contract Labour (Regulation & Abolition) Act."* Learned counsel for the Respondent further contended that the Supreme Court in the case of NILGIRIS CO-OPERATIVE MARKETING SOCIETY LTD. Vs. STATE OF TAMIL NADU AND OTHERS 2004 3 SCC 514 has held that *"organisation or control and supervision is not the only decisive test for determination of the existence of the master and servant. The Court is required to consider several factors, which would have bearing on*

the result and also classified what are the tests to be applied to find out whether any master and servant relationship exists." But in the present case, the Petitioner has not adduced any evidence with regard to tests mentioned in that decisions and he has also not established before this Tribunal that there was master and servant relationship exists between him and the department. Further, he relied on the rulings reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA AND OTHERS *Vs.* UMADEVI AND OTHERS wherein the Full Bench of the Supreme Court have reviewed the entire case laws on the subject and held that "any back door entry in public employment is not permissible. It further held that "even in case employees who are in employment continuously, regularization is impermissible. In any event, before ordering continuance of the employees, whoever not appointed in accordance with rules, it is only the duty of the Court to see equal opportunity for all and constitutional scheme of public employment. Any appointment, not in accordance with rules or made contrary to rules can only be illegal appointment and such appointees are not entitled to any kind of protection." It further held that "a person who enters public appointment either casual or contractual, knows the conditions of appointment at the time of entry and therefore, it may not be open to them to claim any legitimate expectation at a later point of time." It has also held that "when an employee approaches Court for relief, the first thing has to be seen is whether he has got any legal right to be enforced and in the case of contract employees, they have no legal right since they have never been appointed in terms of relevant rules or in adherence of Article 14 & 16 of Constitution of India." Learned counsel for the Respondent further argued that though the Petitioner has alleged that he has worked for more than 240 days in a continuous period of 12 calendar months preceding his disengagement, he has not established this fact with any satisfactory evidence and even assuming for argument sake that he has worked for more than 240 days by this itself would not confer any right upon him to be regularized in service and he further relied on the rulings reported in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION *Vs.* S.C. PANDEY wherein the Supreme Court has held that "daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed thereunder and therefore, he does not derive any legal right." Further, it held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." It also held that "if appointment is made contrary to provisions of statute, the same would be void and effect thereof would be that no legalright could be derived by the employee by reason thereof." Learned counsel for the Respondent further contended that even in the case of termination is found to be illegal, the Supreme Court has held in the case reported in 2005 5 SCC 100 that in such cases normal relief of reinstatement cannot be granted and in this case, since the Petitioner is a contractor and his engagement of contract labour comes to an end, once the period comes to an end. Under such circumstances, no legal right exists to the Petitioner to claim any reinstatement. Since the Respondent is a Government of India Enterprises, the Constitution Bench of the Supreme Court has held that "State is also controlled by economic considerations and financial implications of any public employment, the viability of the department are instrumentality of the State is also of equal concern of the State and therefore, the Court cannot impose financial burden, when the employees are not needed." Under such circumstances, the learned counsel for the Respondent argued that Petitioner seeking reinstatement and back wages is contrary to Supreme Court judgement. Then, the learned counsel for the Respondent contended that though the Petitioner alleged that his juniors were appointed and regularised in service, he has not established this fact with any satisfactory evidence. Even assuming for argument sake that some of his juniors have been regularised or continued in service, the said past practice cannot be followed always as the past practice is not the best practice. Unless the Petitioner is able to show independently that he has right of absorption, it is not open to rely on the past cases. Learned counsel for the Respondent further relied on the decision of Supreme Court reported in CDJ 2006 SC 370 HARYANA STATE ELECTRICITI DEVELOPMENT CORPORATION *Vs.* MAMNI, wherein the Supreme Court has categorically held that "relief of reinstatement with full back wages is not to be given automatically, each case must be considered on its own merit and the changes brought about by subsequent decisions of this Court probably having regard to the changes in policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident." Under such circumstances the previous decisions of Supreme Court was to individualise justice to suit a given situation unqualified as it appears to be. In 2006 4 SCC 1 the Constitution Bench of the Supreme Court has overruled its earlier judgements and which took the above view and further laid down the law relating to public employment in our country is not to regularise the persons who were appointed illegally. The law laid down by the Supreme Court is a binding precedent under Article 141 of the Constitution and it is binding on all subordinate Courts. Therefore, in the changed circumstances, the Petitioner is not entitled to any relief. Hence, he argued that the Petitioner is not entitled to any relief in this dispute.

12. I find much force in the contention of the learned counsel for the Respondent because the Supreme Court in the latest decision reported in 2006 4 SCC 1 while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis the same would come to an end when it is discontinued. Similarly, a temporary employee

could not claim to be made permanent on the expiry of his term of appointment. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Under such circumstances, since the Petitioner has not established before this Tribunal that he was appointed as per the procedure laid down under the Department of Telecommunication, I find he is not entitled to any relief of reinstatement or other relief. Under such circumstances, I find this point that the claim of the Petitioner for reinstatement with continuity of service and back wages against the Respondent/Management is not legal and justified.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

13. In view of my foregoing findings, I find the Petitioner is not entitled to any relief. No Costs.

14. Thus, the reference is answered accordingly.

(Dictated to the P. A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th September, 2006)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner : WW1 Sri S. Saravanan

WW2 Sri R. Nagendran

For the Respondent : MW1 Sri T. Palanichamy

Documents Marked:—

For the I Party/Petitioner :—

Ex.No.	Date	Description
W 1 series	1992-95	Xerox copy of the vouchers.
W 2	Nov.95	Xerox copy of the salary bill.
W 3 series	1996-99	Xerox copy of the messenger delivery receipts.
W 4-	17-12-91	Xerox copy of the cash book register.
W 5	12-06-96	Xerox copy of the representation for regularzation.
W 6	22-11-99	Xerox copy of the order of Tribunal.
W 7	24-01-99	Xerox copy of the order rejecting the claim of Petitioner.
W 8series	1999	Xerox copy of the receipts in which Petitioner signed In different names.
W 9	26-12-94	Xerox copy of the duty memo.
W 10	23-07-97	Xerox copy of the receipt for coolie charges of Rs.60 Given by Petitioner.
W11	13-10-97	Xerox copy of the wage receipt.
W12	13-11-97	Xerox copy of the receipt for coolie charges of Rs. 40 given by Petitioner.
W13	28-01-98	Xerox copy of the instructions to send money order.
W14	21-02-98	Xerox copy of the delivery receipt.
W15	21-02-98	Xerox copy of the instruction given to receive fax machine.
W16	04-04-98	Xerox copy of the wage receipt.
W17	18-06-98	Xerox copy of the wage receipt.
W18	09-09-98	Xerox copy of the memo.
W19	18-02-99	Xerox copy of the delivery receipt.
W20	31-03-99	Xerox copy of the indoor duty
W21	19-06-99	Xerox copy of the wage receipt
W22	28-06-99	Xerox copy of the letter to deliver LCU card
W23	06-08-99	Xerox copy of the wage receipt
W24	31-03-00	Xerox copy of the wage receipt.
W25	29-05-00	Xerox copy of the purchase bill.
W26	Nil	Xerox copy of the identity card.
W27	Nil	Xerox copy of the document showing donation collected by petitioner from employees.
W28	26-09-01	Xerox copy of the representation to increase the salary of Petitioner.

For the II Party/Management :—

Ex. No.	Date	Description
M1	05-05-95	Xerox copy of the contract bill for Petitioner.
M2	08-01-98	Xerox copy of the quotation submitted by Petitioner.
M3	Nil	Xerox copy of the Posts & Telegraphs Manual Vol. IX Relevant page.

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4731.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट आफिसेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 10/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-40012/100/2004-आई. आर.(डी. यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4731.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Offices and their workman, which was received by the Central Government on 13-11-2006.

[No. L-40012/100/2004-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 2nd August, 2006

Present :

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 10/2005

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of O/o. Postmaster General and their workman)

BETWEEN

Sri P. Jayaraman : I Party/Petitioner

AND

1. The Director of Postal Services, O/o. Postmaster General, Central Region, Trichy.
2. The Senior Superintendent of Post Offices, Trichy Division, Trichy.
3. The Senior Superintendent of Post Offices, Salem East Division, Salem

: II Party/Management

Appearance :

For the Petitioner : M/s. S. Jothivani, Advocates

For the Management : Mr. R. Priyakumar, ACGSC

AWARD

The Central Government, Ministry of Labour vide Order No. L-40012/100/2004 IR (DU) dated 21-12-2004 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :—

"Whether the imposition of punishment of removal from service against Shri P. Jayaraman, Ex-Branch Postmaster by the Senior Superintendent of Post Offices, Trochy is legal and justified? If not, to what relief the workman is entitled ?"

2. After the receipt of the reference, it was taken on file as I. D. No. 10/2005 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was appointed as EDBPM at Vanathirayanpattinam BO a/w Udayarpalayam SO on 8-2-85 by the Respondent/Management. The 2nd Respondent is the appointing authority and the Disciplinary Authority and 1st Respondent is the Appellate Authority. While so, the 2nd Respondent issued a charge memo dated 28-2-2000 under Rule 8 of P & T ED Agents (Conduct & Service) Rules, 1964 alleging that the Petitioner has kept the office cash balance short by Rs. 6555.60 on 21-9-99 violating the provisions of Rule 11 (2) of Book of B.O. Rules and kept the cash balance by showing fictitious liabilities on 3-8-89, 7-8-99, 9-9-99 and 20-9-99 violating the provisions of Rule 136(2) of Book of BO rules and he has also failed to maintain devotion to duty contravening the provisions of Rule 17 of P & T ED agents (Conduct & Service) Rules, 1964. The Petitioner denied the above charges and the 2nd Respondent appointed one Mr. V. Shanmugam, Assistant Superintendent of Post Offices, as Enquiry Officer and appointed Sri K. Raveendran, IPO, Trichy as Presenting Officer. The 1st Respondent appointed the Manager, APMG, Chennai as ad-hoc Disciplinary Authority by a memo dated 5-4-2000 and the said appointment was subsequently cancelled by letter dated 23-5-2002. However, the 2nd Respondent appointed one Mr. Pitchaiya, Senior Superintendent of Post Offices, Salem East Division as ad hoc Disciplinary Authority by a memo dated 10-5-2002. Since the 2nd Respondent who is lower in rank than that of the appointing authority for the Petitioner, the Petitioner objected to the appointment of Enquiry Officer and the Presenting Officer by the 2nd Respondent stating that he has no jurisdiction, but his representation was rejected and the Enquiry Officer commenced the enquiry in which the Petitioner has asked the Respondent/ Management for additional seven

documents in his letter. But the Enquiry Officer supplied only two documents and denied five other documents required by him. The non-supply of additional documents requested by the Petitioner is a denial of reasonable opportunity. The 2nd Respondent issued a memo of charge under Rule 8 of P & T E.D. Agents (Conduct & Service) Rules, 1964. But, however, the said rule has been superceded by Gramin Dak Sevak (Conduct & Employment) Rules, 2001. Therefore, the charge memo issued against the Petitioner and the proceedings conducted after the charge memo are without any jurisdiction and illegal. The 3rd Respondent without considering the representation made by the Petitioner imposed the punishment of removal from service on 5.8.2000 which is excessive. Aggrieved by that order, the Petitioner preferred an appeal, which was also rejected by the Appellate Authority. Further, the preliminary enquiry report is the fact finding enquiry and only basing on that report, charge memo was issued to the Petitioner and the preliminary report forms part of regular departmental enquiry, But in this case, the preliminary enquiry report given by the investigation officer has not been given to the Petitioner. The denial of preliminary enquiry report amounts to denial of reasonable opportunity to cross examining the witnesses which is in violation of principles of natural justice. The Respondent/Management exercised unfair labour practice and acted in an arbitrary and illegal exercise of power and imposed the excessive punishment of removal from service against the Petitioner. Further, the Petitioner was not afforded with full and fair opportunity to prove his innocence. Even the Appellate Authority has also not applied his mind with regard to representation given by the Petitioner. The Petitioner is innocent and he has not committed any offence as alleged by the Respondent/Management. Any how, the Petitioner is entitled to the benefits under Section 11A of the I.D. Act and this Tribunal has got every power to interfere with the punishment imposed by the Respondent/Management. Hence, for all these reasons, the Petitioner prays to set aside the order impugned as illegal, arbitrary and in violation of principles of natural justice and direct the Respondent/ Management to reinstate the Petitioner into service with consequential relief.

4. As against this, the Respondent in their Counter Statement alleged that the claim made by the Petitioner is not maintainable before this Tribunal and this Court has no jurisdiction to entertain the complaint and therefore, on the ground of want of jurisdiction, the claim petition has to be rejected. The Petitioner is not a workman since he was appointed as EDBPM, Vanathirayanpattinam BO as his appointment, pay and allowances disciplinary proceedings/reinstatement are governed by statutory instruction issued by Director General of Posts under ED Agents (Conduct & Service) Rules, 1964 and the appointment of Petitioner is governed by statutory rules in appointment and other disciplinary proceedings and hence, the Petitioner should not have approached this Court and he should approach Competent Court. It is true that the Petitioner was appointed as EDBPM, Vanathirayanpattinam BO by the Senior Superintendent of Post Offices, Trichy Division. It is false to allege that he has rendered unblemished service to the Respondent/ Management. The Petitioner has shown fictitious liabilities to justify the excess retention of cash above the authorised limit on various occasions with ulterior motive. He has kept Rs. 6555.60 short in office cash balance on 21-9-99 and therefore, his service was not satisfactory. No doubt, the Respondent has issued charge sheet dated 28-2-2000 under Rule 8 of ED Agents (Conduct & Service) Rules, 1964 and it contains three articles of charges. The first article of charge is that on verification of cash and stamps of Vanathirayanpattinam BO on 21-9-99 in violation of provisions of note below Rule 11 (2) of Book of BO Rules the Petitioner failed to maintain absolute integrity and devotion to duty thereby he has kept the office balance short of Rs. 6555.60. The second article of charge is that he has not written up BO account of Vanathirayanpattinam from 11-9-99 to 20-9-99 when the SDI (P) J. C. Puram Sub-Division visited the BO on 21-9-99 violating the provisions of Rule 133(1) of Book of BO Rules and thereby failed to maintain devotion to duty. The third article of charge is that while working as EDPBM, Vanathirayanpattinam, the Petitioner retained cash in excess of authorised cash balance by showing fictitious liabilities on 3-8-99, 7-8-99 and 20-9-99 violating the provisions of Rule 136(2) of Book of BO Rules and failed to maintain absolute integrity and devotion to duty. The Postmaster General, Central Region Tamil Nadu, Trichy appointed one Mr. S. Pitchaiah as ad-hoc appointing authority dated 10-5-2002 and not the 2nd Respondent. It is not correct to say that the issue of memo of charges and appointment of Enquiry Officer and Presenting Officer by the Respondent is without any jurisdiction. According to the Director General, P & T New Delhi letter dated 16-12-81, there is no bar for initiating disciplinary proceedings for awarding major penalty by the Appointing Authority but or issuing the final orders by the appropriate authority under the constitution and the Respondent/ Management has suitably replied to the Petitioner's representation informing the rule position clearly stating that there is no bar for the prescribed Appointing Authority to initiate the disciplinary proceedings though he is lower in rank than the authority who appointed him. No doubt, the Petitioner has requested to produce seven additional documents and the 2nd Respondent had permitted two documents and rejected the request in respect of five documents, since the documents asked for are not relevant for the purpose of enquiry, the Enquiry Officer has rejected his request. The 3rd Respondent has forwarded the report of the Enquiry Officer to the Petitioner on 16-5-2002. Since no opinion needs to be expressed by the 2nd Respondent, the question of forwarding the opinion of 2nd Respondent to 3rd Respondent does not arise at all. Further, the rule does not require the 2nd Respondent to express his opinion on the enquiry report. No doubt, the P & T EDS Agents (Conduct & Service) Rules, 1964 has been replaced by new rules

called Department of Post; Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 on 24-4-2001, but it has been clearly stated that the change in nomenclature will not in any manner affect the existing terms and conditions of employment of E.D. Agents in terms of non-statutory Agents Rules, 1964 and the legal status of such agents will be suitably reflected in relevant rules to make it amply clear that they would be continued to be outside the civil service of the union. The designation of ED Agents have been changed as Gramin Dak Sevaks and the allowance drawn to them has been ordered to be called as Time related continuity allowance and all other rules and procedure stipulated in above ED Agents rules, 1964 are also still available in the amended Rules called GDS (Conduct & Employment) Rules, 2001. Therefore, the chargesheet issued in relevant rules of erstwhile E.D. Agents Rules, 1964 to the Petitioner is legal. The Petitioner thus kept the office cash short by Rs. 6555.60 showing fictitious liabilities in official records of BO and did not write the BO accounts from 11-9-99 to 20-9-99 and thus his action attracts misappropriation of Govt. money, falsification of Govt. records and gross irregularities and negligence in discharge of official duty with dishonest motive respectively. Therefore, three misconducts are justified for imposing major penalty of removal from service and it cannot be said that the Petitioner was awarded with excessive punishment. The Appellate Authority has also considered these facts and it was rightly rejected by the Appellate Authority on 8-9-2003. No doubt, the Director General's order states that it may however, be desirable to appoint an ADA even before issue of Charge sheet and it is only directory and not mandatory and it cannot be construed that it is compulsory to appoint ADA before issue of Charge sheet. The allegation that there is violation of principles of natural justice is without any substance. The Petitioner was afforded with reasonable opportunity to represent his case and the punishment imposed on him is commensurate to the gravity of the offence committed by him. There is no infringement of rules and procedures and there is no violation of principles of natural justice. Hence, for all these reasons, the Respondent prays that the claim may,be dismissed with costs.

5. In these circumstances, the points for my consideratinn are—

(i) "Whether the imposition of punishment of removal from service against the Petitioner by the Respondent/Management is legal and justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1

6. In this case, it is an admitted fact the Petitioner was appointed as EDBPM, Vanathirayanpattinam BO on 8-2-1985 and on 28-2-2000 a charge memo was issued to him stating that he has shown fictitious liabilities to justify the excess retention of cash above the authorised limit on various occasions and he has kept the office cash balance short by Rs. 6555.60 and he has not written BO account for the period from 11-9-99 to 20-9-99 thus violating the provisions of book of BO Rules and also service rules. Subsequently, on enquiry, the Disciplinary Authority has imposed the punishment of removal from service on 5-8-2002 and his Appellate Authority also was appeal to the rejected by the Appellate Authority.

7. On behalf of the Petitioner, it is contended that the order passed by the Respondent/Management imposing the punishment of removal from service against the Petitioner is illegal. In order to establish the case, the Petitioner examined himself as WW 1 and produced Ex. W1 to W11. Ex.W1 is the copy of the memo of charges issued to him on 28-2-2000. Ex.W2 is the copy of representation submitted by Petitioner. Ex.W3 is the copy of order rejecting the representation of the Petitioner. Ex.W4 is the copy of petition requesting additional documents. Ex.W5 to W7 are the copies of daily order sheet on 7-9-2000, 1-11-2000, 29-11-2000 respectively. Ex. W8 is the copy of order of punishment given by the Disciplinary Authority. Ex.W10 is the of the copy appeal preferred by the Petitioner. Ex.W11 is the copy of the order passed by Appellate Authority. As against this, the Respondent has filed Ex. M 1 to M5 and Ex. M1 is the copy of daily account of Vanathirayanpattinam BO. Ex. M2 is the copy of inventory of cash and stamps taken at Vanathirayanpattinam. Ex. M3 is the copy of statement of Petitioner. Ex. M4 is the copy of statement given by the Petitioner dated 30-12-99. Ex. M5 is the copy of daily order sheet No. 4 in rule (8) enquiry dated 7-9-2000.

8. Learned counsel for the Petitioner argued that the appointing authority of the Petitioner is Senior Superintendent of Post Offices, on the other hand, the authority of Superintendent of Post Offices is lower in rank than that of appointing authority of the Petitioner, who has issued memo of charges and the appointment of Enquiry Officer and Presenting Officer. Since the Superintendent of Post Offices who is lower in rank that that of the appointing authority, the action taken by the said authority is without any jurisdiction and even though the Petitioner has objected to the action taken by the said authority, it was rejected by the Respondent/Management on 9-8-2000 and therefore, the enquiry conducted by the authority who has no jurisdiction, is not valid in law.

9. But, as against this, learned counsel for the Respondent contended that according to the Directorate General P & T, New Delhi letter dated 16-12-81, there is no bar for initiating disciplinary proceedings for awarding major penalty by the appointing authority hut for issuing final orders by the appropriate authority under the constitution. He further argued that the prescribed appointing authority is competent under Rule 7 & 8 of E.D. Agents (Conduct & Service) Rules, 1964 to initiate disciplinary proceedings. Therefore, there may not be any objection, if the prescribed appointing authority issues charge sheet and also orders an enquiry in a major

disciplinary case for satisfying the requirements of Article 311(1) of the Constitution and only it would be sufficient, if the penalty of removal or dismissal from service is not awarded to an E.D. Agent by an authority lower than the authority, which is to be treated as appointing authority for the purpose of this article of Constitution. Therefore, there is no violation namely the charge memo issued by the prescribed appointing authority and ultimately, the penalty awarded by the *adhoc* Disciplinary Authority.

10. I find some force in the contention of the learned counsel for the Respondent.

11. Then again, learned counsel for the Petitioner contended that the 3rd Respondent namely Senior Superintendent of Post Offices, Salem East Division has appointed one Mr. S. Pitchaiya, Senior Superintendent of Post Offices, as the appointing authority to exercise the power of appointing authority in memo dated 10-5-2002. But the Directorate General of Post Offices in his letter dated 16-12-1981 has categorically stated 'it may, however, be desirable to appoint an *adhoc* Disciplinary Authority even before the issue of charge sheet'. Since in this case, *adhoc* Disciplinary Authority was appointed subsequent to the framing of charge, the action taken by the Respondent/Disciplinary Authority is not valid in law. She further contended that no person or agency can exercise any statutory power without a valid appointment or conferment in that behalf and the charge sheet in this case was issued by one, who had no authority to issue under the rules. Therefore, the charge sheet issued by the Respondent is illegal and arbitrary and also violative of principles laid down under Article 14 of Constitution.

12. But, again learned counsel for the Respondent contended that no doubt, the order of Directorate General states that it may however, be desirable to appoint an *adhoc* Disciplinary Authority even before the issue of charge sheet, but on that score it cannot be construed that it is compulsory to appoint *adhoc* Disciplinary Authority before the issuing of charge sheet and it is only a directory and not mandatory. It would be sufficient if the penalty of dismissal or removal from service is not awarded to an ED agent by an authority lower than the authority which is to be treated as appointing authority for the purpose of this Article of Constitution. Under circumstances, based on the provisions only charge sheet was issued and there is no violation of any rules.

13. Here again, I find much force in the contention of the learned counsel for the Respondent.

14. Then again the learned counsel for the Respondent contended that in the domestic enquiry the Petitioner by his letter dated 29-8-2000 requested the Enquiry Officer for supply of seven additional documents in order to prove his innocence and in examining the witnesses. But, the Enquiry Officer *vide* his order dated 7-9-2000 has allowed inspection of only two documents and rejected five documents stating that they are not relevant. The denial of Enquiry Officer for production of documents is denial of reasonable opportunity to the Petitioner and therefore, the enquiry is vitiated.

15. Again, learned counsel for the Respondent contended that no doubt, the Petitioner has asked the Respondent to produce seven documents and the Enquiry Officer has permitted only two documents namely BO daily accounts and MO maintained at Udayarpalayam SO and remaining five documents namely Book of BO Rules; T.A. Bills; Diary of SDI (P) J.C. Puram; Preliminary report of SDI (P) JC Puram : & Cent per cent verification report made by SDI (P) JC Puram were not permitted as the same are not relevant for the purpose of deciding to the case. Therefore, on that ground it cannot be said that denial of production of documents is denial of reasonable opportunity to the Petitioner.

16. Again, learned counsel for the Petitioner contended that relevancy of document can be proved only during the time of trial and therefore, rejecting the representation by stating that these documents are not relevant is not sufficient and it clearly shows the non-application of mind on the part of the Enquiry Officer and therefore, there is a clear denial of reasonable opportunity to the Petitioner.

17. But, as I have already stated the Enquiry Officer has come to the conclusion that the other documents claimed by the Petitioner are not relevant for the purpose of deciding the issues he has rejected the request and on that ground, it cannot be said that the denial of production of documents is fatal to the enquiry and it cannot be said as denial of reasonable opportunity to the Petitioner. The Petitioner has not shown what is the prejudice caused to him by the denial of the said production of documents. As such, I find there is no substance in the contention of the Petitioner in this regard.

18. Then, the learned counsel for the Petitioner contended that it is alleged that preliminary investigation was conducted by the Sub Divisional Inspector (Postal) J.C. Puram and he has also sent report to the Senior Superintendent of Post Offices, Trichy in connection with the alleged shortage of cash. Relevance of this document has been explained by Mr. Ajantha Satru, SDI (P) JC Puram during his cross-examination in the domestic enquiry. He has also clearly stated that his report has become the basis for issuing of charge sheet. Preliminary enquiry is a fact finding enquiry and its purpose is to establish the nature of default and to bring relevant documents on record to facilitate a regular departmental enquiry. In this case, preliminary enquiry report assumes importance in structuring a regular enquiry and in this case, if the Petitioner is in possession of preliminary enquiry report, he will have full opportunity to examine the case against him and formulate his defence and cross-examine the witness effectively. But, on the other hand, it was denied to the Petitioner which is a serious prejudice caused to the Petitioner and which is denial of reasonable opportunity and is in violation of principles of natural justice.

19. But, as against this, learned counsel for the Respondent contended that the Petitioner kept the office cash short by Rs. 6555.60 and he has not written the BO account for ten days and he has shown fictitious liability in office records so as to retain more cash, All these things have been found out by the inspecting authority and he has reported this matter to the higher authorities and upon that report, charge memo was issued to the Petitioner. Merely because, investigation report was not given to the Petitioner, it cannot be said that he was prejudiced seriously because only the investigation done by the officer during the inspection was the foundation for the charge and except this, there is nothing to show that only in the investigation report all things have been stated by the inspecting authority. Further, there is no infringement of rules and procedures and there is no violation of principles of natural justice by not providing the investigation report. No doubt, the Petitioner argued that only from the preliminary report, he will have full opportunity to cross examine the case. But, the charges framed against the Petitioner are based on the investigation report and it cannot be said that much prejudice would be caused to him by not giving the investigation report.

20. I find much force in the contention of the Respondent because by not providing the investigation report, it cannot be said that in this case, the Petitioner was much prejudiced and on that ground we cannot say that there was violation of principles of natural justice, because full opportunity was given to the Petitioner during the domestic enquiry and the Petitioner's representative has elaborately cross examined the Enquiry Officer with regard to his findings and under such circumstances, I find there is no point in the contention of the learned counsel for the Petitioner in this regard.

21. Then the learned counsel for the Petitioner contended that charge-sheet in this case was issued under Rule 8 of P & T ED Agents (Conduct and Service) Rules, 1964. Further, the said rule has been superceded and the Director General of Posts has promulgated that Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001 alone will be applicable to the erstwhile E.D. Agents and the said rule does not contain any provision like Rule 34(1)(b) of CCS (CCA) Rules, 1965 and as such, the progeedings taken under Rule 8 of P & T E.D Agents Rules is not valid on or after 24-4-2001 and as such, the proceedings in this case conducted after 2-4-2001 under P & T ED Agents is without any jurisdiction.

22. But, as against this, learned counsel for the Respondent contended that no doubt, P & T E.D. Agents Rules has been replaced by new rules called Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 on 24-4-2001. But, even in that it was clearly stated that change in nomenclature will not in any manner alter the existing terms and conditions of employment of ED Agents in terms of non- statutory above Agents Rules, 1964. Therefore, the legal status of such agents will be suitably reflected in relevant rules to make it amply clear that they would be continued to be outside the civil service of the union. Further, the executive instructions issued and published below the respective rules as also those brought out in other sections such as method of recruitment etc. and in short, it is to be stated that designation of the ED agents have been changed as Gramin Dak Sevaks and the allowance drawn to them has been ordered to be called Time Related Continuity Allowance and all other rules and procedure stipulated in the above E.D. Agents Rules, 1964 are also still available in the amended rules called GDS (Conduct and Employment) Rules, 2001. Therefore, the charge-sheet issued under relevant rules of the erstwhile ED Agents Rules to the Petitioner cannot be said as illegal.

23. Here again, I find much force in the contention of the Respondent. Merely because the provision of rule stated in the charge-sheet has been wrongly, it cannot be said that the entire proceedings are vitiated. Further, it is clearly established that the other rules and procedure stipulated in E.D. Agents Rules, 1964 are also still available in the amended rules called as GDS (Conduct and Employment) Rules, 2001. Under such circumstances, I find on that ground it cannot be said that the proceedings taken by the Respondent/Management is vitiated.

24. Learned counsel for the Respondent contended that in this case, the Petitioner has kept the office namely branch SO at Vanathirayanpattinam, cash short by Rs. 6555.60 and he has not written the BO account for about ten days and he has shown fictitious liabilities in the office records so as to retain more cash. For the said lapses a departmental enquiry was conducted and he was imposed with the punishment of removal from service after observing all procedures prescribed under rules. Further, reasonable opportunity was given to him to represent against the punishment awarded to him which is commensurate to the gravity of the offence committed by him. There is no infringement of rule and procedure and there is no violation of principles of natural justice. Under such circumstances, it is not a fit case to exercise the discretion under section 11A of the I.D. Act.

25. But, learned counsel for the Petitioner contended that even in P & T Manual it has been reiterated that the EDBPM are empowered to keep office cash in the house and should produce the same whenever directed. In this case, the Petitioner was charged that he had kept the office cash short on the date of verification. But, no opportunity was given to the Petitioner to produce office cash as maintained in the register on the date of verification and the statements were obtained from him under coercion and intimidation with an intention to prove the charges against him. Under such circumstances, it is a fit case to invoke jurisdiction under section 11A of the I.D. Act to modify the punishment imposed on the Petitioner.

26. But, on a perusal of records, it is clear that the inspecting authority has given full opportunity to the Petitioner to produce cash on that date and he has admitted that he has spent the amount and he was not in a position to produce the said amount within that date. No doubt, it

is alleged that statement was recorded by the inspecting authority and the same was obtained from the Petitioner by coercion and intimidation. But, the burden of proving the fact that it was obtained by coercion and intimidation is upon the Petitioner. On the other hand, there is no substantial evidence on the part of the Petitioner to establish this fact that statements alleged to have been given by the Petitioner were obtained by coercion and intimidation. Further, he has not issued any notice to the higher authorities with regard to the coercion and intimidation by the inspecting authority. As such, I find the allegation that due to coercion and intimidation, he has made confessional statement is without any substance. Therefore, I find this is not a fit case to exercise discretion under section 11A of the I.D. Act. Since it is established that the Petitioner has misappropriated the public money and made falsification in Government records and also made irregularities in discharge of his official duties with dishonest motive, I find the imposition of punishment of removal from service by the Respondent/Management against the Petitioner is legal and justified.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

27. In view of my foregoing findings that the action taken by the Respondent/Management against the Petitioner is legal and justified, I find the Petitioner is not entitled to any relief.

No Costs.

28. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 2nd August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner : WW 1 Sri P. Jayaraman

For the Respondent : None

Documents Marked :—

For the I Party/Petitioner :—

Ex. No.	Date	Description
W 1	28-02-2000	Xerox copy of the memo of charges
W 2	02-08-2000	Xerox copy of the order of appointment of Enquiry Officer
W 3	09-08-2000	Xerox copy of the order rejecting the representation of Petitioner
W 4	Nil	Xerox copy of the petition requesting additional documents
W 5	07-09-2000	Xerox copy of the daily order sheet
W 6	01-11-2000	Xerox copy of the daily order sheet
W 7	29-11-2000	Xerox copy of the daily order sheet
W 8	10-5-02	Xerox copy of the order appointing Disciplinary Authority
W 9	05-08-02	Xerox copy of the order of punishment
W 10	03-10-02	Xerox copy of the appeal preferred by Petitioner
W 11	08-09-03	Xerox copy of the order of Appellate Authority

For the II Party/Management :—

Ex. No.	Date	Description
M1	21-09-99	Xerox copy of the BO daily account of Vanathirayanpattinam
M2	21-09-99	Xerox copy of the inventory of cash & stamps taken at Vanathirayanpattinam
M3	21-09-99	Xerox copy of the statement of Petitioner
M4	30-12-99	Xerox copy of the statement of Petitioner
M5	07-09-2000	Xerox copy of the daily order sheet No. 4 in Rule 8

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4732.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयरपोर्ट अथारिटी ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 18/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-11012/3/2003-आई. आर. (एम)]

एन.एस. बोरा, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4732.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18 of 2003) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Mumbai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 13-11-2006.

[No. L-11012/3/2003-IR (M)]

N.S. BORA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, MUMBAI

PRESENT :

Justice Ghanshyam Dass, Presiding Officer

Reference No. CGIT-18 of 2003

PARTIES :

Employers in relation to the management of Airport authority of India

And

Their workmen.

APPEARANCES :

For the Management : Mr. M.S. Bandodkar, Adv.

For the Union : Shri J. P. Sawant, Adv.

State : Maharashtra

Mumbai dated the 26th day of October, 2006

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) *vide* Government of India, Ministry of Labour, New Delhi Order No. L-11012/3/2003-IR(M) dated 29-4-2003. The terms of reference given in the schedule are as follows :

> "*(c) Whether the contract between Airport Authority of India and the Contractor, is sham and bogus and is a comoflage to deprive the workers concerned in the dispute of benefits available to permanent workmen of Airport Authority of India ? (b) Whether the workmen whose names are mentioned in Annexure-I should be declared as permanent workers of Airport Authority of India? (c) What are the wages and consequential benefits to be paid to the workers concerned in this dispute?*"

2. In the reference in question there are 19 workmen who have alleged that they had been employed by the Management of Airport Authority of India, Goa Airport, Dabholim, Goa (hereinafter referred to as the Management) for the perenniel nature of work for cleaning and sweeping of the Terminal building and premises from the year 1997 onwards. The workmen were provided the work by so called contractor for the said work of the Management. The said work was called as Conservancy service by the Management. The contract was given with the intention to circumvent the provisions of the Contract Labour (Regulations and Abolitions) Act, 1970 and the Notification No. S.O. 779 (E) dated 9-12-1976 issued there under prohibiting employment of contract labour. It is alleged that the workmen were attending the permanent full time work but they were deprived of the wages and allowances etc. available to regular workmen of the Management. The contract arrangement was sham and bogus and it was camouflage to deprive the workmen of their rights and benefits to which they were entitled under vairous labour legislation. They had been paid the wages directly by the Management from the year 1997 as per Settlement dt. 11-1-2002 and 14-8-2002. The workmen vide letter dt. 21-11-2002 addressed to the Asstt. Labour Commissioner (Central) *Vasco-da-gama*, Goa raised the Industrial dispute over their demand for directing the Management to desist from unfair labour practice. The conciliation ended in failure. The services of the workmen were terminated by the Management w.e.f. 28-11-2002. The so called contractor was removed by the Management in the year 1997 and then they were paid directly the wages by the Management w.e.f. 1-5-1997. The action of the Management in terminating their services amounts to retrenchment under Section 2(oo) of the Act and failure to comply with the provisions of Section 25-F of the Act. The action is illegal and hence, the workmen are entitled to be reinstated with full back wages and further they are entitled to be regularized in service as permanent workmen. The name of the contractor is M/s. Mag Services and the contract was for one year during the year 96-97 for supply of labour for conservancy work.

3. The contention of the Management is that it had invited tender for conservancy services and after that the contract was given to M/s. Mag Services for one year from May 1996 to 30-4-1997. The workmen had been employed by the Contractor *i.e.* Mag Services and they were paid by the contractor directly. There was no privity of employment between the Management and the workmen and there is no relationship of Master and Servant, or employer and employee. The terms and conditions of the agreement with the contractor have been detailed out in the written statement in verbatim. The instant reference is bad in law since the reference does not have the annexure of the names of the workmen and in fact there was no dispute raised by the workmen vide their letters dt. 21-11-2002 and 28-11-2002 regarding the challenge of the contract on the point that it is sham and bogus or camouflage to deprive the workers. The reference is not in consonance with the dispute raised before the concerned Conciliation Officer. The dispute before the Conciliation Officer was with respect to the wages only. The workmen had filed a writ petition No. 92 of 1997 before the Honourable High Court of Bombay and in that writ petition also there was no challenge that the contract is sham and bogus or camouflage to deprive the benefits to the workmen. The services of the workmen were never terminated by the Management but in fact they themselves refused to the work with the new contractor when the opportunity was given to them to work with the new contractor on the removal of the contractor M/s. Mag Services. The Management paid the wages to the workmen under the orders of the Honourable High Court of Bombay *vide* writ petition No. 92 of 1997 and that payment or continuity of service of the workmen with the Management can not come to the benefit of the workmen to show that they are employees of the Management. There is no question of non-compliance of Section 25-F of the Act.

The work of the workmen was never supervised by the Management but the workmen worked under the supervision of the Contractor. It is also submitted that the Appropriate Government has not issued any notification under Section 10(s) of the Contract Labour (Regulation and Abolition) Act, 1970. The Management has no intention to employ any regular workers. The said Writ Petition was filed under the apprehension of termination of services by the Contractor. The interim order was passed in favour of the workmen restraining the termination of services. In view of the order of the Honourable High Court of Bombay, no action could be taken against the workmen even after unilateral abandonment of the contract by the Contractor M/s. Mag Services. Upon receiving the notice from the concerned Labour Enforcement Officer (Central), Ponda, Goa and unilateral abandonment of contract, the Management had to pay the wages to the workmen to comply with the orders of the Honourable High Court. During the pendency of the Writ Petition a memorandum of settlement dt. 14-8-2002 was arrived at in between the Management and the workmen. The said writ petition was dismissed finally and the interim order vacated by the Honourable High Court *vide* judgement dt. 28-10-2002 in view of the fact that the notification dt. 9-12-1996, issued by the Central Government under the Contract labour (Regulation and Abolition) Act, 1970 had been quashed by the Honourable Supreme Court of India in the case of Steel Authority of India. The services rendered by the workmen under the orders of the Honourable High Court of Bombay could not be defined as services under Section 25(b) of the Act.

4. The workmen have filed the documents per list dt. 13-10-2003. They have been exhibited in accordance with the law. The Management has filed the documents per list dt. 7-11-2005.

5. The workmen have filed the affidavit of Smt. Asha Subash Mandikar in lieu of her examination in chief. In fact, the workmen had earlier filed the affidavit of Mr. V. Venkataswamy but this witness was discharged in view of the request made by the workmen counsel. Smt. Asha has been cross-examined by the learned counsel for the Management wherein she has admitted that she has studied upto VIIth std. in Marathi. She knows the contents of her affidavit. There were only 16 workmen in the writ petition while there are 19 workmen in the reference. She does not know about the judgement of the writ petition. The contract was given to M/s. Mag Services from 1-5-1996 to 30-4-1997. She does not have any proof to show that the payment of wages to them by the Airport Authority prior to September 1998. The dispute was raised by letters dt. 21-11-2002 and 28-11-2002 before the Labour Commissioner. The other letters for raising the dispute were alleged to be in existence by the witness but none of them was filed despite the adjournment of the cross-examination on 7-12-2005. The cross-examination was concluded on 18-5-2006.

6. The Management filed the affidavit of Shri. B. Suresh Babu in lieu of his examination in chief. He has reiterated the Acts relating to the defence of the Management. He has been cross-examined by the learned counsel for the workmen. There is nothing worth in it.

7. I have heard the learned counsel for the parties and gone through the record. I have also gone through the written submissions made by the learned counsel for the parties.

8. As per reference, the following points arise for consideration :

(1) Whether the contract between the Management and M/s. Mag Services is sham and bogus and is a camouflage to deprive the workers concerned.

(2) Whether the workmen under reference should be declared as permanent workers of Airport Authority of India.

(3) What are the wages and consequential benefits to be paid to the workers.

9. In view of the specific contention raised by the Management, one more issue to be considered is as to whether the reference is not maintainable in view of the contentions raised by the Management. I, deal this issue first in the following para.

10. This much is clear from the bare perusal of the record that the dispute raised before the concerned Conciliation Officer is not to the tune of the terms of the reference. To my mind, on that count, the reference cannot be said to be not maintainable. The reference has to be decided on merits since it has been made by the Central Government within its powers and the subject matter under the reference is the same. The effect of non challenging the contract before the Conciliation Officer is to be considered while deciding the points under the reference but it is not correct to say that the reference is to be thrown away merely because the contract was not challenged before the Conciliation Officer and hence, there was no dispute in the eye of law.

11. Findings on Points (1), (2) and (3)

No evidence whatsoever is available on record to infer that the contract awarded in favour of Mag Services by the Management is sham and bogus. The peculiar facts of the instant case is that the contract was only for one year upto 30-4-1997. It was awarded after inviting the tender in accordance with law. There is no hidden secret as mentioned above, the workmen never challenged this contract to be sham and bogus till the making of the instant reference. The dispute was raised before the concerned Conciliation Officer by means of the letters dt. 21-11-2002 and 28-11-2002 wherein the demand was with respect to the wages only. It is the admitted fact that the workmen had been employed for the first time by the M/s. Mags Services. They never worked with the Airport Authority of India prior to becoming of the workers of the contractor. Thus, there direct employment by the Airport Authority of India does not arise at all. The dispute arose

only when the Contractor relieved itself from the contract by informing the Management and when it was disputed by the Management, the contractor abandoned the contract unilaterally. This fact is proved on record. In this back ground, the workmen had resorted to file the writ petition 92 of 1997 before the Honourable High Court. Their interest was safe guarded by the Honourable High Court. Since the contractor left the contract, and the interim order was in favour of the workmen, the Management had to comply with the order and thus kept making payment of wages the orders of the Honourable High Court of Bombay. This payment cannot be a ground in favour of the workmen to show that they have been paid wages directly by the Management. No evidence whatsoever is available on record nor it could be to show that the Management ever paid any wages except under the orders of the Honourable High Court. In view of the law laid down by the Honourable High Court of Gujarat, in a recent case reported in 2006 I CLR 569, Medical Officer, Primary Health Centre v/s. Jikubhak R. Saparia, the period of service rendered by the workman under the interim orders of the High Court could not be considered for computing continous services. In this background, I find no evidence on record to show that the workmen under reference had put any continuous service for 240 days in a year and that they would be deemed to be the workmen of Airport Authority of India.

12. The aforesaid writ petition in question had been finally dismissed by the Honourable High Court of Bombay in view of the judgement of the Hon'ble Supreme Court in the case of Steel Authority of India. The notification dt. 9-12-1976 under Section-10 of the provisions of contract labour (Regulation and Abolition) Act, 1970 has already been quashed by the Honourable Apex Court in the case of Steel Authority of India and there is no fresh notification thereafter. Hence, the contract workers cannot be automatically declared to be the regular workers of the Management or they can be absorbed in services of the Management. The workmen under reference cannot be declared to be the workmen of the Management under Section 2(s) of the Industrial Disputes Act. There is no violation of Section 25-F of the Act. There is no violation for Section 9-A or Section 33 of the Act. The rulings cited by the learned counsel for the workmen, i.e., 1978 II LLJ 397 in between Hussainbhai, Calicut and Alath Factory Thozhilali Union, Calicut and others and 1995 I CLR 529 (Kerala High Court) in between Kerala State Coir Corporation Ltd. vs. Industrial Tribunal are not helpful and the facts and circumstances of the present case.

13. In a case reported in 2004 (4) L.L. N 252 (High Court of Calcutta) in between workmen (represented by Colliery Mazdoor Sabha and Central Government Industrial Tribunal, the Hon'ble High Court of Calcutta has held that even in absence of registration of principal employer and of the license in favour of the contract as required under Section 7 and 12 respectively of Contact Labour (Regulation and Abolition) Act, 1970, the workmen of the contractor are not entitled to claim their right as direct employees of the organization (Employer).

14. The workmen under reference have been paid regular wages by the Management under the orders of Honourable High Court of Bombay. The Management ceased to pay the wages after the final dismissal of the writ petition 92 of 1997 and vacation of interim order on 28-10-2002. This stoppage of payment of wages does not amount to termination of services of the workmen under the law, since they were not the direct employees of the Management nor they could be deemed to be the workmen of the Management under the law. This stoppage of payment of wages does not amount to retrenchment. There appears to be no violation of Section 2(oo), 2(bb) and Section 25-F of the Act.

15. The more important fact which has come on record is that the work of conservancy services was taken through some other contractor M/s. Proclam Systems and Solutions after the abandonment of the contract by M/s. Mags Services. The dispute with respect to the amount of wages was the main dispute before the Conciliation Offcer, The workmen were offered the employment by the new contractor during the conciliation proccedings but the workmen admittedly refused to work. In view of the law laid down by the Hon'ble High Court of Delhi in a recent case reported in 2006 LLR 1043 in between Triloki Nath vs. Shri Dharam Paul Arora, the workmen who failed to join duty when a specific offer had been made during the Conciliation proceedings could not be blamed the Management for it and it would be deemed that the workmen were not interested in service. In this view of the matter, the workmen under reference who admittedly refused to work under the changed contractor could not claim any benefit from this Tribunal at this juncture.

16. Keeping in mind the entire evidence available on record, the legal position and the discussions made above, I conclude that the contract in between the Airport Authority of India and the contractor is neither sham and bogus nor the camouflage to deprive the workers under reference for the benefits of permanent workmen. The workmen under reference cannot be deemed to be the workmen of the Airport Authority of India and that being so, they cannot be declared as permanent workmen. They are not entitled to any relief.

17. An Award is made accordingly.

JUSTICE GHANSHYAM DASS, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2006

का.आ. 4733.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इन्टरनेशनल एयरपोर्ट अथोरिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या आई डी. 381/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-11015/1/2004-आईआर (एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4733.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I. D. 381/04) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial Dispute between the Employers in relation to the management of International Airport Authority and their workman, received by the Central Government on 13-11-2006.

[No. L-11015/1/2004-IR (M)]

N. S. BORA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 26th September, 2006

Present :

Presiding Officer : Shri K. Jayaraman

Industrial Dispute No. 381/2004

(In the matter of the dispute for adjudication under clause (d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of International Airport Authority of India and their workmen)

Between :

S/Sri V. Baskaran & 15 Others : I Party/Petitioner

And

1. The Airport Director, International Airport Authority of India (IAD) Madras Airport, Chennai : II Party/Respondent-1
2. Delight Engineers, Mumbai : II Party/Respondent-2
3. Permier Techincs, Mumbai : II Party/Respondent-3

Appearance :

For the Petitioner : M/s. Row & reddy, Advocate

For the Respondent No. 1 : M/s. Vijay Narayan, Advocate

For the Respondents 2 & 3 : None

AWARD

The Central Government, Ministry of Labour vide Order No.L-11015/1/2004-IR(M) dated 18-05-2004 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :—

> "Whether the request of the workmen (list attached) for their regularisation in service by the management of International Airport Authority of India, Madras is justified? If so, to what relief the concerned workmen are entitled?"

2. After the receipt of the reference, it was taken on file as I. D. No. 381/2004 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioners in the Claim Statement are briefly as follows:—

Though 16 workmen were mentioned in the reference the workmen namely S/Sri. A. Appandairaj, P. Parthiban, Ramesh Babu and P. Kumar are not interested and therefore, out of 16 only 12 are interested in pursuing this dispute. The 1st Respondent which was originally called as International Airport Authority of India is a body constituted under the Airport Authority Act and is a Central Govt. Organisation. All the major airports in India are controlled by AAI and they are incharge of the maintenance and administration of airports. They have got aero bridges which are being operated by the Petitioners. In Bombay and Delhi similar aero bridge operators are being directly employed by AAI, but for the reasons best known to them, they are not operating aero bridges directly but only through contractor and that the Petitioners are not their employees but the employees of contractors and they claim that Delight Engineers and Premier Technics namely 2nd & 3rd Respondents are the contractors of the 1st Respondent/Management. The Petitioners mentioned their educational qualification, experience etc. in the annexure of the Claim Statement and many of the Petitioners are working from 1989 onwards continuously. While so, when the 1st Respondent gave internal advertisement in employment news in the year 1994 inviting application for the post of aero bridge operators of Chennai Airport, the Petitioners feared that the 1st Respondent may recruit some one else as aero bridge operators and in the process, they may lose even the present job and all the years of experience would go a waste. Therefore, they have filed a Writ Petition No. 1676 of 1996 in Madras High Court for declaration that they are all workers of 1st Respondent and on 22-2-96, the Madras High Court admitted the Writ Petition and also granted interim order stating that Petitioners had a prima facie case which are supported by documents that they were working as aero bridge operators and if the Petitioners are still working, their services will not be terminated. When the matter came up for final hearing, the High Court directed the Central Govt. to refer the dispute to the Industrial Tribunal for adjudication. It further directed to retain the Petitioners in service on the same terms and conditions as on date without prejudice to their contention of both sides and also directed to continue the Petitioners in employment even if there was a change of contractor and the employees may be treated as engaged under the new contractor. Though the 1st Respondent contended that the Petitioners were employed through Delight Engineers namely 2nd Respondent herein, during the pendency of aforesaid Writ Petition a new alleged contractor namely 3rd Respondent Premier Technics came in and some of them, the management claimed, were employed under Premier

Technics. Without prejudice to the contention, the Petitioner contended that the so called contract at Chennai is sham and nominal. The 1st Respondent cannot employ aero bridge operators in Bombay & Delhi directly and claim that the same in Chennai Airport is being done through contractors. Such practice will be highly discriminatory and it is in violation of Article 14 & 16 of the Constitution and Article 39A, 42 and 43 of Directive Principles of State Policy. Therefore, on this ground itself, the 1st Respondent should be directed to absorb the Petitioners as their employees and give them the benefits of wages etc. as given to the Aero bridge operators employed by 1st Respondent at Bombay & Delhi airports. Secondly, maintaining the aero bridges is a part of the statutory functions of the 1st Respondent under Section 12 of AAI Act and it is an integral part of the functions of Airport Authority. Being a part of the statutory functions the 1st Respondent cannot give out such work on contract and even if such work is given out on contract, it should be assumed that the so called contractor is carrying on this work for and on behalf of the Airport Authority and the employees under the alleged contractor must be deemed to be the employees of the 1st Respondent. Except for lending their names, the 2nd and 3rd Respondents have no control over the Petitioners and the entire control and discipline is exercised only by the 1st Respondent. The officers of the 1st Respondent supervised their work. The Petitioners made log entries in the registers maintained by 1st Respondent regarding condition of aero bridge and the leave applications have to be addressed to the 1st Respondent Junior Engineer and the Petitioners have to report daily for work to the 1st Respondent and the roster is fixed by the 1st Respondent. The 2nd and 3rd Respondents, have no premises inside the airport and they have no office at all. The 1st Respondent has merely adopted this device in order to deprive the Petitioners.

Legitimate benefits which they are entitled to get as employees of the 1st Respondent. Hence, the Petitioners pray this Tribunal to hold that the contract with the 2nd and 3rd Respondent by the 1st Respondent is only sham and nominal and also to pass an award directing the 1st Respondent to absorb them in regular cadre and fix them on regular scale giving benefits of fitment and increments. Without prejudice to their contentions, in any event, if this Tribunal comes to the conclusion that Petitioners are only employees of contractors, it may defer the matter to enable the Petitioners to move the concerned authority under Contract Labour (Regulation & Abolition) Act.

4. As against this, the Respondent in its Counter Statement contended that International Airport Division of Airports Authority of India controls the Chennai airport consisting of Anna International Terminal and the Kamaraj Domestic Terminal. In the year 1985, an aero bridge was established in Kamaraj domestic terminal and in 1987 an aero bridge was established in Anna International Terminal. At that time, it became necessary to engage persons to operate therefore bridge but in view of the fact that no technically competent persons were available to operate the aero bridge, it was decided to operate the aero bridge on contract basis and accordingly, a notice was issued inviting tenders from reputed aero bridge operators for the purpose of operating the aero bridge as well as maintaining electrical, mechanical and electro mechanical aspects of the aero bridge. In response to the advertisement, one Delite Engineers, Mumbai, the 2nd Respondent herein submitted an application and on consideration of the same, it was decided to award the contract to 2nd Respondent in respect of Kamaraj Domestic Terminal. Accordingly, contract was entered into w.e.f. 28-10-1986. At that time, since there were few flights operating from Madras Airport, therefore, only four persons were working under the contract. In the course of time, these four persons have been increased to eight persons. In 1987 the contract for Anna International Terminal was also advertised and in response to the advertisement, one Premier Technics applied and on consideration of the said application, the contract was awarded to the said firm w.e.f. 26-4-89. At present, there are 16 persons working, 8 under Delite Engineers namely the 2nd Respondent and 8 under Premier Technics, namely the 3rd Respondent and the present dispute is concerned with the 12 persons out of the 16 persons. The contract between the 1st and Respondents 2 and 3 is a genuine and valid contract and it cannot be stated that the contract is sham and nominal. The said contract was entered into, after due process of tenders and after evaluating the tenders . Having been employed under a contract for a period of few, they cannot seek a declaration that they are the direct employees of the 1st Respondent. The Petitioners after a few years, they obtained interim orders from the High Court and are continuing by virtue of interim orders. It is denied that in Bombay & Delhi direct labour is being employed, in any event, the situation in Bombay & Delhi is totally different from the situation in Madras. In Madras Airport, the Airport Authority has made efforts to obtain people from the Employment Exchange or the open market for operation and maintenance of the aero bridges. Due to lack of qualified persons, the management has taken a policy decision that an integrated contract should be given to a technically competent person for the purpose of maintaining as well as for the purpose of operating the aero bridges. Mere operation of the aero bridges is not sufficient to confer the qualification as set out in the job specification. It is not correct to say that the 1st Respondent has control over the workmen namely the Petitioners and the Airport Authority does not have any disciplinary control over the workmen or supervision over the workmen. Only the 2nd and 3rd Respondents have their own supervisors. It is also not true to say that this Respondent has paid wages to the concerned workmen. It is false to contend that the Petitioners are employees of the 1st Respondent . Even the Writ Petition the Petitioners have clearly admitted that they do not have the qualifications prescribed for the post of aero bridge operators and therefore, the question of regularising their service will not arise and no direction can be issued to appoint a person in

violation of recruitment rules or job specification prescribed for the post. Employing labour on contract is a policy of the govt. and it cannot be held to be in violation of any law and there is no notification prohibiting employment of contract labour in the job of aero bridge operators issued under section 10 of Contract Labour (Regulation & Abolition) Act. As per Section 12 of AAI Act, the main function is to construct and maintain terminals and to provide navigational aids and air traffic services for smooth movement of aircrafts. An aero bridge is only a passenger facility and is not one of the main functions of the AAI. There is no aero bridge at domestic terminal and at the Indira Gandhi International Airport, New Delhi and it is clear from this that aero bridge is not one of the statutory or main functions of the AAI. The Respondents 2 and 3 would receive material from the management of AAI and this material would be used for the purpose of effecting repairs and maintenance. However, it is significant to point out that the material supplied would be deducted from the share of the contract amount. Now the contracts are being extended in accordance with the direction of Hon'ble High Court in W.P. No. 1676/96. It is only technical staff employed by contractor for supervising the work of contract labour and they are supervised by Junior Engineers of 1st Respondent. Leave applications of contract labourers are addressed to the respective contractors and leave are granted by the respective contractors only. Hence, for all these reasons the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are —

(i) "Whether the prayer of the Petitioners for their regularisation in service under the 1st Respondent/Management is justified?

(ii) To what relief the concerned Twelve workmen are entitled?"

Point No.1:—

6. The contention of the 12 Petitioners in this dispute is though the 1st Respondent contended that they are employees of the contractor namely 2nd and 3rd Respondents, which is not a correct one and they are direct employees under the 1st Respondent/Management. For this, they contended that under section 12 of Airport Authority Act, the 1st Respondent has to maintain aero bridges which is part of the statutory functions and it is an integral part of the functions of the Airport Authority. Being a part of the statutory functions the 1st Respondent cannot give such work on contract and even if, such work is given under contract, it should be assumed that the so called contractor is carrying on this work for and on behalf, of the 1st Respondent and the employees under the alleged contractor must be deemed to be employees of the 1st Respondent. Further, they contended that even assuming without conceding that they are contract labourers, the said contract is sham and nominal. The so called contractors namely 2nd and 3rd Respondents have no premises inside the airport and they have no office at all and the 1st Respondent has merely adopted this device of contract in order to deprive the Petitioners of legitimate benefits which they are entitled to get as employees of 1st Respondent.

7. In order to substantiate their claim, the 2nd Petitioner, 7th Petitioner and 6th Petitioner were examined as WW I, WW2 and WW3 respectively and on the side of the Petitioners 26 documents namely EX.W1 to W26 were marked. As against this, on the side of the Respondent one Mr.V. Balasubramanian, Deputy General Manager (Law) was examined as MW 1 and on the side of the Respondent 83 documents were marked as EX.M1 to M83.

8. Learned counsel for the Petitioner contended that under section 12 (a) of the Airport Authority Act, in order to manage the airport, the civil enclaves and the aeronautical communications stations efficiently, the Airport Authority of India has to plan, develop, construct and maintain runways, taxiways, aprons and terminals and ancillary buildings at the airports and civil enclaves. Therefore, providing aero bridge facility is a statutory duty cast upon the 1st Respondent and in order to provide this facility, it has to maintain and employ the Petitioners to run the aero bridge. On the other hand, in this case, it is alleged that aero bridge operation was given to the contractor. Being part of the statutory functions, the 1st Respondent namely Airport Authority, cannot give out such work on contract and even if such work is given out on contract, it should be assumed that the so called contractor is carrying on this work for and on behalf of the Airport Authority and employees under the alleged contractor must be deemed to be the employees of the 1st Respondent. Learned counsel for the Petitioner relying on the analogy of Section 46 of Factories Act, where any factory which employs more than 250 workers they are statutorily required to have a canteen, those canteen employees have been held to be the employees of factory itself and it is reported in 2000 (4) SCC 245 and he relied on the decision of Supreme Court reported in 2003 (7) SCC 488 MISHRA DHATU NIGAM LTD. AND OTHERS *Vs.* M. VENKATAIAH AND OTHERS, wherein relying on the decision reported in SAIL case, the Supreme Court has observed that "discharge of a statutory, obligation of maintaining a canteen in any establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of principal employer and that such cases do not relate to or depend upon abolition of contract labour" and it also held that "we see no merit whatsoever in the submissions made to contra by way of challenge in all these appeals, wherein the appellants concerned, indisputably are obliged to run the respective canteens in their establishments on account of the obligation cast upon them under the mandatory provisions of the Factories Act, 1948 and Rules made thereunder." Learned counsel for the Petitioner further contended that even in the Counter Statement, it is admitted that Airport Authority of India controls the Chennai Airport consisting of Anna International Terminal and Kamaraj

Domestic Terminal and while they established aero bridge in Kamaraj Domestic Terminal in 1985, they have established aero bridge in Anna International Terminal in the year 1987 and at the time of establishment of aero bridge, it became necessary to engage persons to operate aero bridge, but in view of the fact that no technically competent person was available to operate the aero bridge, it was decided to operate the aero bridge on contract basis and accordingly, they have appointed the 2nd Respondent as a contractor. But, the Petitioner have clearly; mentioned in their Claim Statement stating that in Bombay and Delhi aero bridge operators are directly employed by Airport Authority of India but for no conceivable reasons in Chennai, the Airport Authority of India claims that they are not operating aero bridges directly but only through contractors and the Petitioners are not their employees but employees of the contractors. Though they have clearly stated this fact in their Claim Statement and though the Respondent made an allegation in the Counter Statement in para 10 that they are denying the allegation that in Bombay & Delhi direct labour is being employed, they have stated in any event, the situation in Bombay & Delhi is totally different from the situation in Chennai. But, no evidence was adduced before this Tribunal what is the situation which is different from Bombay & Delhi than in Chennai. Further, they have not disputed the fact that in Bombay & Delhi they are employing direct aero bridge operators. Under such circumstances, the 1st Respondent cannot engage aero bridge operators at Bombay and Delhi directly and claim that the same in Chennai airport is being done through contractors and such practice is highly discriminatory and in violation of Articles 14 & 16 of Constitution of India and also against the provisions of Directive Principles of State Policy. Further, though the Respondent contended in the Counter Statement that they have made efforts to obtain people from Employment Exchange and open market for operation and maintenance of the aero bridges and only due to lack of qualified persons, the Respondent/Management has taken a policy decision that an integrated contract should be given to a technically competent person for the purpose of maintaining as well as for the purpose of operating the aero bridges. A contract was entered into between the Airport Authority of India and 2nd Respondent, but they have not given any evidence as to what steps they have taken to employ aero bridge operators from open market or from Employment Exchange and therefore, it is a clear discrimination among the workmen. Further, the V Schedule of the I.D. Act states that to employ workman as "badlies", casuals or temporaries and to continue them as such for years, with the object of depriving them the status and privilege of permanent workmen is unfair labour practice. In this case, some other Petitioners are working under the Respondent/Management from the years 1985 and 1989 onwards and they have not paid wages as per regular employees and only to deprive them with regard to statutory benefits, the 1st Respondent/Management has employed them as contract labourers. Under such circumstances, it is an unfair labour practice exercised by the 1st Respondent/Management. Learned counsel for the Petitioner further relied on the rulings reported in 1990 (supp.) SCC 668 SANKAR MUKHERJEE AND OTHERS *Vs.* UNION OF INDIA AND OTHERS wherein the Supreme Court while considering the West Bengal notification prohibiting employment of contract labour for cleaning and stacking and other allied jobs except loading and unloading of bricks from wagons and trucks, it held "job of loading and unloading of bricks incidental to industry as well as to the job of stacking of bricks and also perennial in nature, hence exclusion of the job from the beneficial purview of the notification amounted to violation of Article 14 of Constitution of India." Learned counsel for the Petitioner further contended that though the Respondent alleged in the counter statement that in any event, the situation in Bombay & Delhi is totally different from the situation in Chennai, but they have not explained what is the meaning of "in any event" and therefore, it is only an unfair labour practice made by the 1st Respondent/Management and the Petitioners are thus employed for very long number of years as contract labourers only to avoid them from claiming the benefits of labour legislations.

9. But, as against this, learned counsel for the Respondent contended that though the learned counsel for the Petitioner relied on the rulings reported in 2003 7 SCC 488, the said decision was arising on the Factories Act and in a recent judgement reported in 2005 II LLJ 684 HALDIA REFINERY CANTEEN EMPLOYEES UNION AND ANOTHER Vs. INDIAN OIL CORPORATION LTD. AND OTHER wherein the employees of canteen in factory governed by Factories Act, 1948 where the canteen run by a contractor and the canteen employees seeking regularisation in the service of company, in which Supreme Court has clearly held that "employees in statutory canteen run by contractor are employees of management only for the purposes of Factories Act and not for any other." Therefore, no reliance can be placed on the decision reported in 2003 7 SCC 488 for the purpose of this case. He further contended that though the learned counsel for the Petitioner contended that the Respondent has not disputed the fact that in Bombay & Delhi aero bridge operators are directly appointed by Airport Authority of India, actually, it is not a valid contention because in para 14 of the Counter Statement, it is alleged that as per section 12 of AAI Act, the main function is to construct and maintain terminals and to provide navigational aids and air traffic services for smooth movement of aircrafts and an aero bridge is only a passenger facility and is not one of the main functions of the 1st Respondent and it is further alleged that there are noaero bridges at the domestic terminal and at Indira Gandhi International Airport, New Delhi and from this, it could be seen that aero bridge is not one of the statutory or main functions of AAI. For this allegation, the Petitioners have not filed any reply statement nor denied the same In their evidence. Under such circumstances, it is futile to contend that the Respondent has not denied the allegation of the Petitioners that in Bombay & Delhi the Airport Authority

of India recruited aero bridge operators directly. Learned counsel for the Respondent further relied on the rulings reported in 2002 10 SCC 119 MICHAL GILL *Vs.* M.P. SRTC wherein the Supreme Court has held that authenticity of the document seriously disputed by Respondent in counter affidavit averring that it was filed for the first time before Supreme Court and no reply filed by the appellant despite ample time given and hence, the averment made in counter affidavit to be accepted as a correct one." He also relied on the rulings reported in 1998 9 SCC 458 RAJ BAHADUR SHARMA *Vs.* UNION OF INDIA AND OTHERS wherein the Supreme Court while considering the pleadings in counter affidavit and written statement, it has held that "where facts and averments are not specifically denied, consequently inference to be drawn that statement of fact pleaded by opposite party should be accepted." In that case, the appellant pleaded that he could not join duty at the place where he was transferred because he was not given relieving order and the railway passes. In evidence there is no material on record to show that passes etc. were not issued to the Petitioner. The appellant plea was not positively denied by other side. Therefore, the Supreme Court has held that "inference to be drawn that appellant was not at fault in not joining duty." Relying on these decisions, learned counsel for the Respondent contended that when the Respondent has taken the stand that in Delhi Indira Gandhi International Terminal and in domestic terminal, there is no aero bridge as a passenger facility, the Petitioner has not taken any stand that in Delhi domestic and international-terminal, the aero bridge is very well available and they have not given any evidence to that effect also. Under such circumstances, the allegation that the Respondent has not denied the plea taken by the Petitioner in the Claim Statement is not valid.

10. I find much force in the contention of the learned counsel for the Respondent. Therefore, I find it is not a valid contention of the Petitioner that the Respondent has not denied the allegation of the Petitioner made in the Claim Statement.

11. Then the learned counsel for the Petitioner contended that even though it is alleged that there is a contract between the 1st and other Respondents with regard to employment of contract labourers the so called contract was extended for over three months and the so called contract is sham and nominal document and except for lending their names, the 2nd and 3rd Respondents have no control over the Petitioners and the entire control and discipline are exercised by the 1st Respondent alone namely the Airport Authority of India. The 1st Respondent's Junior Engineers alone supervised the work of the Petitioner and the Petitioners made log entries in the registers maintained by the 1st Respondent regarding condition of aero bridge and the leave application has to be addressed to junior Engineer who forwards it to the administrative head and the Petitioners have to report for duty daily to the 1st Respondent and the Petitioners work in three shifts of 8 hours duration and which Petitioner should come for which shift are determined only by the 1st Respondent and all the 24 hours they are working continuously. Under such circumstances, the so called contract entered into between the 1st and other two Respondents are sham and nominal documents.

12. Learned counsel for the Petitioner further relied on the documents which are marked on the side of the Petitioner and also on the side of the Respondent. Ex. W1 is the copy of office order issued by Airport Director dated 9-6-92 wherein the Airport Director has passed an order with regard to locking arrangement in which it is stated that doors should be fully kept locked and secured by aero bridge operators duly checked by the concerned Assistant Engineer (Electrical) and Executive Engineer (Electrical) periodically and he further stated that any deviation or lack will be viewed seriously including disciplinary action against the concerned official. Therefore, for the acts of aero bridge operator, it is stated that disciplinary action will be taken against the official. From this, it is clear that supervision with regard to aero bride operation must be done by the officials of the 1st Respondent/Management. Though this letter was despatched to the Engineering staff, this letter was not despatched to the alleged so called contractors. The next document relied on by the counsel for the Petitioner is Ex. W5 which is a leave letter sent by one of the Petitioners Mr.Gunasekaran, wherein he has addressed a leave letter to the Junior Engineer (Electrical) of Airport Authority of India and the Junior Engineer has forwarded this letter to the higher ups and it was not forwarded to the contractor as alleged by the 1st Respondent/Management. Further, the log extract produced by the Petitioner namely Ex.W8, W9 and W11 clearly establish that it is only the Petitioners who have made entries which were submitted to the Airport Authority of India and the attendence register maintained by the Airport Authority of India clearly shows that the Petitioners are under the control of Airport Authority of India and they are supervised only by the officials of Airport Authority of India. Furthermore, under Ex. W13 , the Executive Engineer has addressed a letter to the Deputy General Manager (Personnel) to fill up the post of aero bridge operator which fell vacant during the course of time. It is also the contention of the learned counsel for the Petitioner that the duty roaster under Ex. W9 clearly establish that the duty allotted to the Petitioners were only done by officers of 1st Respondent and not the supervisors or technical persons of the contractors. All these documents clearly establish the fact and clinchingly prove that the Petitioners are under the control and supervision made by the 1st Respondent and not by the contractors and the so called contract is only sham and nominal and hence, under no stretch of imagination it can be said that Petitioners are contract labourers under the control of 2nd and 3rd Respondents.

13. As against this, learned counsel for the Respondent contended that though the Petitioners have produced certain documents it will not prove that control and supervision was made by 1st Respondent/

Management. No doubt, the Petitioners produced Ex.W1 office order issued by Airport Director. But by this it cannot be said that the Petitioners are employed directly by the Airport Authority of India and this document is an internal correspondence and no way it will helpful to establish the fact that Petitioners were under the control of 1st Respondent namely Airport Authority of India. No doubt, the Petitioner has produced a copy of leave letter, but it is not clinchingly establish that leave was sanctioned by the Airport Authority of India, on the other hand, no document was produced by the Petitioner to substantiate their claim that Airport Authority of India has exercised supervision and control over the Petitioners. Though the Petitioners have produced Ex. W12 to show that disciplinary action was taken against one of the Petitioners, there is no proof to show that questions were asked by the officers of the Airport Authority of India or enquiry was conducted by the officers of Airport Authority of India. This document is created only for the purpose of this case and it will not prove or establish the allegations of the Petitioner. No doubt, the Petitioner has produced a copy of log book and attendance register, but it is not established by the Petitioners that these documents were maintained by the 1st Respondent/Management. On the other hand, it is the clear evidence of the Respondent that attendance register and log book alone were given to the contractors and the contractors have to maintain these attendance registers and log books and entries must be made by aero bridge operators. No doubt, there are initials of officers of 1st Respondent/ Management in the attendance register and also in log book entries, but on that ground, it cannot be said that control was exercised by the 1st Respondent/ Management against the Petitioners. As per clause in contract agreement, the contractor alone through his supervisor has to make entries in the attendance register and the initials made by the officials of the 1st Respondent/ Management only to verify that they have worked in the Respondent premises and to ascertain the number of days they have worked in a month for calculating wages to the Petitioners. Thus, the Petitioners wanted to take advantage of the initials made by the officials in the registers for the purpose of this case and it is a vague inference to be drawn in the circumstances of the case and it will no way prove that the 1st Respondent has exercised control and supervision over the Petitioners.

14. Learned counsel for the Respondent further relied on the rulings reported in 2004 3 SCC 514 WORKMEN OF NILGIRI CO-OP. MKT SOCIETY LTD. *Vs.* STATE OF T.N. AND OTHERS wherein the Supreme Court has held that whether the workers are employees of principal employer or of contractor, which is only a pure questions of fact and the burden of proof lies on the party setting up plea regarding existence of such relationship .....No decision of the Supreme Court has laid down any hard and fast rule nor is it possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test - be it control test, be it organisation of any other test- has been held to be the determinative factor for determining the jural relationship of employer and employee. There are cases arising on the borderline between what is clearly an employer-employee relation and what is clearly an independent entreprenecurial dealing. Different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein. . . .What is needed is an integrated approach meaning thereby integration of the relevant tests where for it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent. If the provisions of the contract as a whole are inconsistent with its being a contract of service, it will be some other kind of contract and the person doing the work will not be a servant. Whether the contract is a sham or camouflage is not a question of law which can be arrived at having regard to the provisions of the Contract Labour (Regulation & Abolition) Act. It is for the Industrial Adjudicator to decide the said question keeping in view the evidences brought on record. Where a person is engaged through an intermediary or otherwise for getting a job done, a question may arise as the appointment of an intermediary was merely sham and nominal and rather than camouflage where a definite plea is raised in the Industrial Tribunal or Labour Court as the case may be, and in that event, it would be entitled to pierce the veil and arrive at a finding that the justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and employee between the principal employer and the workman." Relying on these decisions and also SAIL case, learned counsel for the Respondent contended that in this case, though the Petitioners alleged that they are under the direct control and supervision of the 1st Respondent, there is no evidence to substantiate their claim. The documents produced by the Petitioners cannot prove that control was exercised by the 1st Respondent alone against the Petitioners. The 1st Respondent has called for tenders for maintenance and operation of aero bridge in Chennai Airport and the Petitioners are employed by the contractors and therefore, they cannot claim that they are directly employed by the 1st Respondent. Further, in this case, though the Petitioners have not taken any stand that interview was conducted by the Respondent/Management during their engagement as aero bridge operators, all of a sudden they have taken the plea in their evidence that oral interview was conducted by the Junior Engineer/Assistant Engineer and they have been selected after verifying their records. This plea was taken as a new plea and it was made only for the purpose of this case. Though they have stated that they have been appointed by the 1st Respondent/ Management, no appointment order was produced by the Petitioners. Under such circumstances, the plea that they have been appointed by the 1st Respondent/Management is only a false one. Since the Petitioners are contract employees, they cannot pray for regularisation and he relied on the rulings reported in 2006 1 LLN 860 STATE OF

KARNATAKA AND ORS. *Vs.* KGSD CANTEEN EMPLOYEES WELFARE ASSOCIATION AND OTHERS, wherein the employees of the canteen of Karnataka Govt. Secretariat seeking regularisation of their services as employees of the State with the same wages as paid to similarly placed Govt. employees on the ground that they have completed more than ten years of service. While the State rejected their claim, on Writ Petition filed by the employees, learned Single Judge of the High Court has accepted their plea. On appeal, by the State before Division Bench, the Division Bench of High Court upheld the order of Single Judge, but on appeal before Supreme Court, the Supreme Court has held that *"canteen run by Secretariat department is not a hospitality organisation of the State and the workers thereof cannot be equated as employees of the State and Court cannot frame a scheme by itself or direct the State to frame a scheme for regularising the services of ad-hoc employees."* It further held *"the recourse to the remedy of Writ is not appropriate in such cases."* Relying on this decision, learned counsel for the Respondent contended that though the Petitioners contended that it is a statutory duty on the 1st Respondent to provide aero bridges, it is not established by the Petitioners that it is statutory duty of the 1st Respondent, on the other hand, it is only a passenger facility given by the Airport Authority of India to passengers and it cannot be said that it is a statutory duty on the 1st Respondent. Secondly, though the Petitioners contended that they are employed by the 1st, Respondent directly, they have not established this fact with any satisfactory evidence that the 1st Respondent alone had appointed them as aero bridge operators. Further, though 16 Petitioners have filed Writ Petition before the High Court for regularisation, when the matter was referred to this Tribunal, it is stated that only 12 persons are interested in this dispute. Furthermore, as a subsequent development, one of the Petitioners out of 12 Petitioners now not working in aero bridge operation, on the other hand, he is now working in conveyor belt under the same contractor. These facts clearly establish the fact that Petitioners are only contract labourers employed by 2nd and 3rd Respondents and they are not employed by the 1st Respondent at all. Furthermore, though it is stated by the Petitioners that out of 16, four persons are not interested, it is admitted that the said 4 persons were neither terminated nor dismissed by 1st Respondent/ Management. Under such circumstances, at no stretch of imagination, it can be said that the 1st Respondent has exercised control and supervision over the Petitioners. Lastly, the learned counsel for the Respondent contended that though it is alleged that contract is sham and nominal, the burden was not discharged by the Petitioner that the contract is a sham and nominal document. Therefore, the Petitioners are not entitled to any relief in this dispute.

15. I, find much force in the contention of the learned counsel for the Respondent because though the Petitioners alleged that it is a statutory duty on the part of the 1st Respondent/Management to maintain aero bridges in the airport, it is not established by the Petitioner, that it is a statutory duty cast upon the 1st Respondent. Secondly, though the Petitioners alleged that it is an unfair labour practice exercised by the Respondent/ Management against the Petitioners, it is clear from the evidence that Central Govt. has not prohibited by any notification with regard to contract labourers for the employment of aero bridge operation. Under such circumstances, it cannot be said that aero bridge operation must be done by 1st Respondent/ Management namely Airport Authority of India and it can very well be given to contract labourers. Lastly, from the evidence and also from records, it is not established that the contract entered into between the 1st Respondent and 2nd and 3rd Respondents are sham and nominal. Under such circumstances, I find the Petitioners are only contract labourers and their request for regularisation in services of 1st Respondent/Management is not justified.

Point No. 2:—

The next point to be decided in this case is to what relief the Petitioners are entitled?

16. In view of my foregoing findings that the Petitioners are only contract labourers and their request for regularisation is not Justified, I find the Petitioners are not entitled to any relief in this dispute. No Costs.

17. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th September, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioners : WW 1 Sri V. Baskaran
WW2 Sri B.Ramesh
WW3 Sri K. K. Prasad

For the Respondent : MW1 Sri V. Balasubramanian

Documents Marked:—

For the I Party/Petitioner :—

Ex.No.	Date	Description
W1	09-06-92	Xerox copy of the office order
W2	15-07-94	Xerox copy of the advertisement
W3	07-09-94	Xerox copy of the entry pass
W4	07-09-94	Xerox copy of the entry pass
W5	06-01-95	Xerox copy of the letter from one of the Petitioner to Junior Engineer
W6	30-04-92	Xerox copy of the medical certificate issued to Sri V. Baskaran
W7	23-01-95	Xerox copy of the entry pass
W8	05-02-95	Xerox copy of the log extract
W9	20-03-95	Xerox copy of the application for identity card

Ex.No.	Date	Description
W10	14-12-83	Xerox copy of the conduct certificate
W11	28-04-85	Xerox copy of the entry pass
W12	28-07-85	Xerox copy of the statement of one of the Petitioners
W13	11-10-95	Xerox copy of the correspondence between Executive Engineer and G.M. (Personnel)
W14	Apr-Dec.93	Xerox copy of the attendance register
W15	Jan-Oct.94	Xerox copy of the attendance register
W16	Jan-Nov.95	Xerox copy of the attendance register
W17	29-11-95	Xerox copy of the log book
W18	11-11-95	Xerox copy of the flight entry log book
W19	May' 92 to Sep.95	Xerox copy of the duty roster
W20	March'94 to Aug. 94	Xerox copy of the attendance roll
W21	15-12-97	Xerox copy of the regularisation order issued to Mr. Francis
W22 series	Nil	Xerox copy of the educational qualification and other Certificates pertaining to Mr. Baskaran
W23 series	Nil	Xerox copy of the educational qualification and other Certificates pertaining to Mr. K. K. Prasad
W 24 series	Nil	Xerox copy of the educational qualification and other Certificates pertaining to Mr. K. Selvam
W25 series	Nil	Xerox copy of the educational qualification & other Certificates pertaining to Mr. Bharathi
W26	20-11-96	Xerox copy of the counter statement filed by Respondent in W.P.1676/1966.
For the II Party/Management :—		
M 1	11-02-97	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M2	11-02-97	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M3	14-02-97	Xerox copy of the agreement between 1st Respondent And Delite Engineers
M4	20-03-97	Xerox copy of the agreement between 1st Respondent And Premier Technics
M5	01-12-97	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M6	01-12-97	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M7	23-01-98	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M8	23-01-98	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M9	06-05-98	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M10	06-05-98	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M11	29-07-98	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M12	29-07-98	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M13	02-11-98	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M14	02-11-98	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M15	23-12-98	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M16	23-12-98	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M17	25-02-99	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M18	24-02-99	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M19	28-04-99	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract

Ex. No.	Date	Description
M20	28-04-99	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M21	28-06-99	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M22	28-06-99	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M23	26-08-99	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M24	26-08-99	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M25	26-10-99	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M26	26-10-99	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M27	31-12-99	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M28	31-12-99	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M29	01-03-00	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M30	01-03-00	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M31	27-04-00	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M32	27-04-00	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M33	30-06-00	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M34	30-06-00	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M35	31-08-00	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M36	31-08-00	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M37	24-10-00	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M38	24-10-00	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M39	26-12-00	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M40	26-12-00	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M41	21-02-01	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M42	21-02-01	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M43	23-04-01	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M44	23-04-01	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M45	22-06-01	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M46	22-06-01	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M47	24-08-01	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M48	24-08-01	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M49	22-10-01	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M50	22-10-01	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M51	19-12-01	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M52	19-12-01	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M53	25-02-02	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract

Ex. No.	Date	Description
M54	25-02-02	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M55	23-04-02	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M56	23-04-02	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M57	24-06-02	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M58	24-06-02	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M59	23-08-02	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M60	23-08-02	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M61	23-10-02	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M62	23-10-02	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M63	23-12-02	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M64	23-12-02	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M65	20-02-03	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M66	20-02-03	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M67	22-04-03	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M68	22-04-03	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M69	12-06-03	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M70	12-06-03	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M71	15-09-03	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M72	15-09-03	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M73	22-12-03	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M74	17-12-03	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M75	26-03-04	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M76	26-03-04	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M77	23-06-04	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M78	18-06-04	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M79	27-10-04	Xerox copy of the letter from 1st Respondent to Premier Technics regarding contract
M80	27-10-04	Xerox copy of the letter from 1st Respondent to Delite Engineers regarding contract
M81	27-12-04	Xerox copy of the letter from 1st Respondent to Delite Engineers awarding of contract
M82	Nil	Xerox copy of the job specification for the post of Aero Bridge operator
M83	Nil	Xerox copy of the agreement between the 1st Respondent and Premier Technics.

नई दिल्ली, 13 नवम्बर, 2006

का.आ 4734.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या सी. आर. 22/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-29012/176/98-आई आर(एम)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 13th November, 2006

S.O. 4734.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here by publishes the Award (Ref. No. C.R. 22/99) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mysore Minerals Limited and their workman, which was received by the Central Government on 13-11-2006.

[No. L-29012/176/98-IR (M)]

N.S. BORA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 31st October, 2006

PRESENT

Shri A R SIDDIQUI, Presiding Officer

C R No. 22/1999

I Party	II Party
Shri Thimmaiah, S/o Thopaiah, Kurihundi Post, Hullahalli Hobli, Nanjangud Tq., Mysore.	The Chairman and Managing Director, Mysore Minerals Limited, No. 39, M.G. Road, Bangalore-560001

AWARD

The Central Government by exercising the powers conferred by Clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* Order No. L-29012/176/98-IR (M) dated 1-3-1999 for adjudication on the following schedule :

SCHEDULE

"Whether the termination of Shri Thimmaiah, Mazdoor Asuli Manganese Mines by the management of M/s. Mysore Minerals Ltd. is justified ? If not, to what relief the disputant is entitled to?"

2. When the matter stood for Evidence on Domestic Enquiry, it was taken up before the Lok-Adalat and both the parties appeared and have settled the matter out of court and filed a Joint Memo to pass award accordingly in terms of the said memo. Hence, the following award.

"The Management is directed to reinstate the first party into service without any backwages, however with continuity of service forthwith. The above said Joint Memo shall form, part of the Award."

(Dictated to UDC, transcribed by him, corrected and signed by me on 31st October, 2006.)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4735.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल बैंक ऑफ कॉमर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-I, चण्डीगढ़ के पंचाट (संदर्भ संख्या 243/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/182/99-आई आर(बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4735.—In Pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 243/99) of the Central Government Industrial Tribunal-cum-Labour Court, No. I, Chandigarh as shown in the Annexure in the industrial dispute between the management of Oriental Bank of Commerce and their workman, which was received by the Central Government on 13-11-2006.

[No. L-12012/182/99-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No I D 243/99

Sh Amar Nath S/o Shankar Lal, V.P.O. Mehmadpur, Teh. Jadadhari, Yamunanagar, Haryana.

... Applicant

Versus

Oriental Bank of Commerce, The General Manager (P), OBC, Head Office, Harsha Bhawan, E-Block, Cannaught Place, New Delhi-110001.

... Respondent

APPEARANCES

For the workman : Sh. Jasbir Singh

For the management : Sh. Ram Chander

AWARD

Passed on 5-10-2006

Central Government *vide* notification No. L-12012/182/1999-IR (B-II) dated 29-10-1999 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Oriental Bank of Commerce, represented by General Manager, Oriental Bank of Commerce, Harsha Bhawan, E-Block, Cannaught Place, New Delhi, in imposing punishment of dismissal from service on their workman Sh. Amar Nath, Peon w.e.f. 1-9-93, is fair and just ? If not, what other relief the workman is entitled and from which date ?"

2. Workman filed claim statement wherein he claimed that he was chargesheeted on 15-6-93 and without proper enquiry conducted on 30-6-1993 and was concluded. He was dismissed from service. The Enquiry was absolutely one sided and not fair enquiry officer got recorded the statment of the workman forcibly on 30-6-1993 and the workman has requested the enquiry officer that before the statment to give him permission to engage some of his co-worker. His application was rejected without passing a speaking order and without giving an opportunity or the letter dated 15-6-93 to which the management is taking as chargesheet is no chargesheet nor reply was sought of any kind. His statement was recorded under false assurance as he was not allowed to engaged the co-worker when he is only upto 8th class pass and the enquiry officer and prosecution officer are legally qualified. The enquiry was predetermined and was completed within one hour. Termination order is illegal because no show cause notice alongwith the copy of the enquiry proceedings was supplied to the worker. Punishing authority not passed the speaking order. Worker's real sister was expired and he and his family were in physical trouble and on the other side his services were terminated.

3. Bank Respondent filed Written Statement wherein bank denied allegations of the workman and taken a preliminary objection that reference is not maintainable as termination of services of the workman based on admission of charges by the workman during the enquiry. He has not come with clean hands and has concealed the factum of admission of charges by the workman during the enquiry. On merits it is admitted that workman was appointed on 3-2-1981 but the workman was in habit of absenting himself without prior permission without having any leave to his credit. *Vide* letter dated 23-9-1987 he was awarded the punishment of warning for his act of unauthorised absence. Instead of improving he again remained unauthorisedly absent for which he was issued charge sheet on 28-11-1989 and enquiry was instituted since the employee voluntarily admitted the charges levelled again him *vide* letter dated 5-2-1990 proposal of punishment of dismissal was made. However keeping in view his assurance to remain punctual instead of dismissal he was awarded the punishment of stoppage of one annual increment *vide* order dated 12-3-1990.

4. As the employee was not attending his duties again on 28-8-90 he was advised to join his duty and to submit his explanation for his absence for which he neither cared to resume duties nor submit any reply. Accordingly in terms of para 17(a) of the Bipartite Settlement, his name was struck off from the rolls of the bank treating his case was voluntary cessation of employment w.e.f. 5-10-1990. However in view of his assurance he was reinstated *vide* letter dated 23-10-1990 on humatarian grounds.

5. Even after this he remained unauthorisedly absent between the period from 17-3-1991 to 12-6-1991 and was chargesheeted on 24-6-1991. However to afford one more opportunity *vide* letter dated 21-5-1992 he was awarded stoppage of two increments for the year 1992 and 1993 instead of proposed punishment of dismissal. Till 10-9-1992 he remained unauthorised absence for 1020 days without authorisation/sanction and without any leave to his credit. whereas as per the settlement, an employee can remain on extra ordinary leave only to the extent of 365 days during entire life. However again during the period between 29-9-92 to 15-6-93 he remained unauthorisedly absent for 111 days for which he was again chargesheeted on 15-6-1993. Explanation for unauthorised absence was called *vide* letter dated 2-6-1993 followed by telegramme dated 11-6-1993 but the same was not replied and since no reply was given by the workman, therefore, chargesheet was issued on 15-6-1993 and it was decided to hold enquiry against him. He was asked to appear before the enquiry officer as and when informed by enquiry officer in this regard. It is wrong that the bank was pre-determined to hold enquiry rather fact is that as workman had admitted the charges levelled against him voluntarily and the enquiry was concluded on 30-6-93. The enquiry was conducted in a fair manner by giving workman an opportunity of hearing. The workman has given a statement in his own hand admitting the charges to the enquiry officer and this fact found mention in the enquiry proceedings. Workman earlier also admitted the charges as admitted this time. He did not ask for the permission to engage some co-workers and made a specific statement that he did not want to engage any representative in departmental enquiry and wants to put his case himself. The enquiry conducted by the enquiry officer was fair and was not conducted in favour of the bank and it was conducted in a fair manner and workman admitted the charges voluntarily.

6. It is strongly opposed that on workman application dated 29-9-93, order dated 8-10-1993 is not a speaking order and no opportunity of being heard given to the workman, rather it was an appeal before the appellate athority which was dismissed by the appellate authority on 6-10-1993. Termination of the services of the workman is legal and justified.

7. Show cause notice along with copy of enquiry proceedings was supplied to the workman mentioning therein the proposed punishment of termination of his services and he was also given an opportunity of personal hearing on 28-8-93 but workman neither appeared for personal hearing nor any reply to show cause notice was submitted by him. Termination order is a self speaking order.

8. Workman filed rejoinder wherein he reaffirmed his claim statement.

9. To prove his case workman filed his own affidavit and management filed the affidavit of one Jatender Pal management Staff OBC Regional Office Karnal. The management also filed the complete enquiry proceedings.

10. I have heard arguments on the fairness of enquiry of both the parties.

11. Learned counsel for the workman Shri Jasbir Singh submitted in arguments that worman was illegaly

terminated w.e.f. 1-9-93 and the action of the management of O.B.C. in terminating the service from the above date is not fair and just and he may be reinstated with full backwages. In support of his contention he has referred to State of Punjab *Vs.* Dr. Harbhajan Singh Greasy 1994(2) SCT 144, State of Punjab *Vs.* Palwinder Singh 2004(2) SCT 227. Haryana State Electricity Board, Panchkulla *Vs.* Presiding Officer, Labour Court, Faridabad 2001 (1) SCT 132 and Anand G. Joshi *Vs.* Maharastra State Financial Corp. Bombay 1992(1) SCT 288.

12. On the other hand learned counsel for the management Shri Ram Chander submitted that termination dated 1-9-1993 of the workman perhaps is not the first termination. Earlier about two times management proposed to terminate his services by holding enquiry by serving chargesheets and all the time only lenient view was taken on the assurance of the workman and only one increment or two increments were stopped. He submitted that management conducted the enquiry as per procedure of settlement dated 10-4-02 entered between management of 52 banks management represented by Indian Bank Association and bank employees Union. He submitted that in this case relevant procedure is given in Clause 11 and 12 of the above settlement. Clause 11 relates to that when it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days threof. Procedure has been given in Clause 12 which is as follows :

(a) when an employee against whom disciplinary action is proposed or likely to be taken shall be given a chargesheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended :

(i)(x) hy a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed.

OR

(ii) at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

(iii) with the Bank's permission, by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him .

13. While summing up his arguments, he submitted that authorities referred by the workman are not applicable and that the management has followed the procedure as laid down and agreed between the Indian Bank Association and the Unions of the various banks. He submitted that as per clause 12(a) when an employee against whom disciplinary action is proposed or likely to be taken shall be given a chargesheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry. In this case in compliance of the above rules, when it was decided to hold enquiry against the workman, he shall be given only a chargesheet clearly setting forth the circumstances and a date shall be fixed. In this case, complying the above provision, the bank came to the conclusion that bank proposed to hold a departmental enquiry, wants to proceed against the workman and take disciplinary action. The chargesheet setting all the circumstances appeared against him was given and conveyed to the workman. Enquiry officer was appointed and a date was fixed for enquiry and sufficient time was given to him to enable him to prepare his explanation and also to produce any evidence that he may wish to lead in his evidence. He was directed to appear before the enquiry officer conducting the enquiry but workman himself did not allow the enquiry to come at a stage where cross-examination of bank's witness could be done. In the first sitting of the enquiry, the workman has admitted his guilt before the enquiry officer and only later after dismissal now he has alleged that his statement was not voluntarily and he was forced to make a statement by the enquiry officer without any evidence. Workman is silent that earlier on two occasions he also admitted his guilt before the enquiry officer and on his admission of his guilt, a lenient view was taken and enquiry was stopped and he was reinstated. The workman is a habitual absentee beyond 360 days he remained absent even after his assurance without any leave to his credit. The enquiry officer also complied clause 12(a) fully and asked him whether he wanted to be represented by a member of his union or other union as per rule but he also submitted before the enquiry officer that he did not want any representative and conduct his case himself. He admitted his guilt and the enquiry was closed as workman was not willing to contest enquiry against him. Even on his application that is actually is an Appeal, order passed was speaking and he was given an opportunity to show cause before taking any action by the enquiry officer and also by the appellate authority and all the time he was asked to appear in person. He submitted that settlement dated 10-4-2002 entered between the parties is applicable and forceful and management can not go beyond this settlement and clause 12(a) which requires to serve a chargesheet only and fix the date for enquiry. There is no force in the arguments of the workman and workman has no case as he was a habitual absentee and out of 13

years of service he remained absent for 1020 days and again thereafter also he absented for 111 days for which present chargesheet was served. Three times charge sheet was issued and after enquiry two time he was served dismissal notice and 3rd time he was served proposed notice for for feiture increment and it is 4th enquiry.

14. In the present case is 4th charge sheet, proper show cause for punishment of dismissal was served to him and again in Appeal proper show cause was served after giving him full opportunity.

15. In view of the above submissions and arguments, my persual of oral evidence and documents, there is no dispute between the parties regarding facts of the case. As submitted by the management workman has not rebutted the contentions of the management that workman was issued chargesheet four times in his tenure before lastly dismissed. That he remained absent for 1020 days and again thereafter absented for 111 days for which the present chargesheet was served in his 13 years of service and in total service one bank employee can not remain absent not beyond 360 days.

16. Workman stressed that enquiry was not fair as he was not asked to file reply. As he was not asked to file his reply on personal appearance it vitiated the enquiry and only on this score along it can be said that enquiry was not just and was unfair. On the other hand to this only point vehemently raised by the workman and also supported law referred by him in para 11 above, management's contention is that the enquiry was conducted in accordance with the agreement/settlement arrived at between the parties i.e. Unions/associations of various Bank employees and banks who signatory to this settlement also, how the departmental action will be taken against a bank employee. A provision was made in clause 11 and 12 of the settlement of the year 2002. In view of the above clause 11 and 12 bank contentions are that in strict compliance of the provisions of the above settlement equal opportunity to both the parties i.e. bank as well as its employee. In clause 12 A it is provided that when an employee against whom disciplinary action is proposed or likely to be taken shall be given a chargesheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness, on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry. He submitted that till the above provisions mutually agreed after the issuance of charge sheet, enquiry shall start and he can file reply if any before the enquiry officer i.e. giving his explanation and there is no violation of any rule and in view of the specific provisions agreed by both the parties in the above settlement of 2002. In view of these provisions as are mutually settlement and law referred by him is not applicable. He further submitted that as regard appointment of any representative etc. to defend the workman the workman himself refused to engage.

17. It is further concluded that in view of the above and settlement of the year 2002 the enquiry was conducted in a very fair manner and through out in 13 years of service always a lenient view was taken against the workman and it is the 4th time this charge sheet was issued to him and on his voluntarily pleading guilty, and refusing to take assistance of any other representative, there was no need to proceed further and therefore, enquiry was concluded on the same day within one hour. There was no unjustification and no violation of any rule and regulation.

18. On the other hand advocate of the workman only stressed that he was not given any opportunity to file reply to the charge sheet. He was also not allowed to engaged any defence representative to defend him and that enquiry was concluded within one hour and it is pre determined to dismiss the workman by the enquiry officer and the bank.

19. I found that workman advocate has not rebutted the arguments of the management vehemently and did not say whether settlement was applicable or not in this case. Further more in this case as regard opportunity provided to the workman is concerned, I have found that 4th time this charge sheet was given and workman did not mend himself and continued to remain absent even after 1020 days for 111 days at 4th time in his 13 years of service whereas the maximum limit of remaining absent is 360 days. Of the earlier three times, two times, even after proposing the punishment of dismissal, lenient view was taken. Therefore, I am of the considered view that as both the parties made a settlement to provide in a manner as provided in clause 12 of the settlement of the year 2002 and Bank acted accordingly in enquiry this court can not declare this settlement illegal and unforceful which can not be enforced. I am of the considered view that management complied with the settlement and that workman was not willing to defend his own case, and the enquiry rightly concluded on the same day and enquiry was fair and there was no illegality. He was given full opportunity. Even on 4th time his appeal was dismissed by a speaing order and even given an opportunity to appear personally but he failed to do so.

20. In view of the above, I hold that the action of the management of Oriental Bank of Commerce represented by General Manager, Oriental Bank of Commerce, Harsha Bhawan, E-Block, Cannaught Place, New Delhi, in imposing punishment of dismissal from service on their workman Sh. Amar Nath, Peon w.e.f. 1-9-93, is fair and just and legal. In view of my above decision, I further hold that workman is not entitled to any relief. The reference is

answered accordingly. Central Government be informed file be consigned to record.

Chandigarh
Oct. 5, 2006. RAJESH KUMAR, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4736.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2,चण्डीगढ़ के पंचाट (संदर्भ संख्या 1107/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/61/99-आई. आर(बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4736.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1107/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Chandigarh as shown in the Annexure in the industrial dispute between the management of UCO Bank and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-12011/61/1999-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Presiding Officer : Shri Kuldip Singh

Case No. I. D. No. 1107/2k5.
Registered on 22-9-2005.
Date of Decision 19-9-2006.

The State Secretary UCO Bank Staff Association, C/o UCO Bank, Circular Road, Bhiwani (Haryana)

...Petitioner

Versus

UCO Bank The Zonal Manager UCO Bank, Zonal Office, SCO 1092-93, Sector-22-B, Chandigarh

...Respondent

APPEARANCE

For the Workman : Nemo

For the Management : Mr. N. K. Zakhmi Advocate.

AWARD

The workmen are not present. Management appears through Counsel.

It has been noticed that the workman has not appeared in this case on any date fixed. Even he filed the claim Statement through Shri A. N. Verma, who also stopped appearing in the case long ago. The Management filed Written Statement on 2nd March, 2000, and thereafter the case was fixed for filing the affidavits of the parties. But interim orders show that the workman never appeared in person and his representative also appeared very rarely. On 10th Feb., 2006, one Surinder Kumar appeared for the workman, but without authority. Thereafter also the workman has not appeared.

On record, there is only Claim Petition of the workman, the averments of which have been denied by the Management in their Written Statement. Except that there is no evidence worth the name which can be read for and against the claim made by the parties. The documents placed on record cannot be read since nobody has come forward to prove them under law. The workman has not come to stand to the cross-examination of the Management.

On record, I do not find any evidence to decide whether or not in a case an employee seeks reversion from the post of Head Cashier Category E, he is debarred for all the functional special allowances posts for a period of one year. There is also no evidence to decide whether the post of Special Assistant, which is functional special allowance post, should go to the next senior eligible employee consequent upon reversion of Shri S. S. Raheja from the post of Head Cashier Category E. For want of evidence it cannot be decided that the workman is entitled to any relief. The reference received from Govt. of India *vide* their notification No. L-12011/61/99/IR(B-II) dated 28th Oct., 1999, is answered in the terms that the workman is not entitled to any relief as he has failed to show that he is entitled to any relief. The award is passed in these terms. Let a copy of this award be sent to the appropriate Govt. for necessary action and the file be consigned to record after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4737.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 103/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/108/2005-आई. आर(बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4737.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103/

2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the management of Indian Bank and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-12011/108/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 25th August, 2006

PRESENT

Presiding Officer : K. Jayaraman

Industrial Dispute No. 103/2005

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian bank and thier workmen.)

BETWEEN

The General Secretary, Indian Bank Employees' Union	:	I Party/Claimant

AND

The Deputy General Manager, Indian Bank, Chennai	:	II Part/Management

APPEARANCE

For the Claimant	:	Mr. E. Arunachalam, Authorised Representative
For the Management	:	M/s. T. S. Gopalan & Co., Advocates.

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-12011/108/2005-IR(B-II) dated 19-9-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :—

"Whether Shri R. Parthasarathy, Part-time Sweeper, Nungambakkam branch of Indian Bank, Chennai is eligible to draw ¾th scale wages, if not, to what relief the workman is entitled ?"

2. After the receipt of the reference, it was taken on file as I.D. No. 103/2005 and notices were issued to both the parties and the I Party entered appearance through authorised representative and the II Party/Management entered appearance through their advocates and both sides filed Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner Union in the Claim Statement are briefly as follows :—

The Petitioner has been working as permanent Part-time sweeper in the Respondent/Bank branch at Nungambakkam, Chennai from 26-7-96 drawing ½ scales wages of sub-staff cadre. In terms of Respondent/ Management circular dated 28-10-80, wages of sweeper employees were fixed based on space area for the purpose of sweeping has been arrived at on the basis of carpet area for which the rent is fixed and paid by the bank. However, the other area of sweeping were not taken into account while fixing the scale wages to sweeper employees. Subsequently, in a settlement dated 28-7-93 under section 18(1) read with Section 2(p) of I. D. Act in the matter of fixation of scale wages to sweeper employees in which it is stated that floor space of sweeping area of the premises of branch in which they are working and also the duty timings fixed therein are the parameters for fixation of scale wages. By a letter dated 16-2-95 revised parameters/norms for the payment of scale wages to the permanent Part-time sweeper employees was implemented. In terms of revised parameters/ norms, the authorities shall have to take into account (a) floor space area for the purpose of may hereafter be determined as carpet area plus area pertaining to toilets, corridor, staircase and other reasonable areas to be decided by sanctioning authority which require daily sweeping and (b) parameter for maximum floor space area to be swept by a full time sweeper may be fixed as 8000 sq.ft. The scale wages of the concerned employee was fixed at half scale wages while the branch was functioning at old premises with ground floor only. Subsequently, Nungambakkam branch was shifted to a new building namely the present address consisting of ground and first floor with a total floor area of 4212 sq. ft. The ground floor is about 2320 sq. ft. and the 1st floor about 1982.00 sq.ft. totalling to around 4212 sq. ft. After that the Petitioner and also subsequently, the union has taken up the matter through letters and communication to raise the scale wages of the concerned employee. But, the Respondent has not increased the scale wages as entitled to him from the date of shifting of the premises of the branch. The Respondent/Bank has deliberately declined to take into account the carpet area pertaining to toilet, corridors, portico etc. for the purpose of arriving at the total carpet area for fixing their scale wages. If these factors are taken into account the concerned employee would definitely become entitled to receive ¾ scale wages of sub-staff scale of wages as laid down in the settlement and circular instructions. Therefore, the action of the Respondent/Bank is illegal, arbitrary and also in violation of terms of legally binding settlement dated 28-7-93 and it also amounts to unfair labour practice. Hence, for all these reasons, the Petitioner union prays this Tribunal to pass an award holding that concerned employee is entitled to ¾ scale wages from the date of shifting namely from 8-10-98 and direct the Respondent/Management to enhance the scale wages of ¾ to the concerned employee.

4. As against this, the Respondent/Management in its Counter Statement contended that no doubt, the Respondent/Management entered into a settlement dated 1-10-80 with the Petitioner union U/s. 18(1) read with Section 2(p) of I.D. Act. With regard to parameters/norms In determining the wages payable to Part-time sweepers. The concerned employee joined the services of the bank on 26-9-94 as Part-time sweeper In Annasalai branch of Respondent/Bank. As per the settlement, he was fixed in

1/3 scale wages of sub-staff cadre and subsequently, as per career path devised in settlement dated 28-7-93 he was posted to work in Nungambakkam branch upon enhanced ½ scale wages. The Nungambakkam branch was shifted to a new building consisting of ground and first floor. The plinth area of ground floor of Nungambakkam new building is 2320 sq. ft. and carpet area of ground floor is 1805 sq.ft. and the plinth area of 1st floor is 1892 sq.ft. and carpet area of first floor is 1830 sq.ft. including stair-case and the carpet area of first floor consists of 1830 sq.ft. including staircase. Thus, the concerned employee has been sweeping daily a total carpet area of 3715 sq.ft. and he has been working 18 hours in a week. The Respondent/Bank engaged a panel engineer to measure entire sweeping area of the premises. Based on the total hours engaged by the branch and the concerned employee was sweeping only 3715 sq. ft. daily, he is not eligible to be paid more than ½ scale wages as part time sweeper. As such, the Respondent/Bank informed him by letter dated 7-1-99. Wages for part time sweepers are determined based on twin parameter i.e. total number of hours worked in a week and total area swept by the part time sweeper. The settlement dated 28-7-93 arrived at under Section 18(1) of Section 2(P) of the Act is for filling up of vacancies of part time sweepers and it was arrived at for altogether different purpose and not for the purpose as averred by the Petitioner Union. The terms of settlement dated 1-10-80 remain unaltered. Though the plinth area of new premises works out to 4212 sq.ft. according to measurement of carpet area i.e. sweeping area works out to 3715.79 sq.ft. and hence, the lease agreement entered into between the bank and landlord and the details of rent paid by the bank are irrelevant and out of context of the claim. Both as per Head Office guidelines and settlement, the concerned employee is eligible to pay only ½ scale wages and not ¾ scale wages. Therefore, the claim of the Petitioner Union is unjustified. Therefore, the Respondent prays to dismiss the claim of the Petitioner with costs.

5. Again, in the rejoinder the Petitioner contended that it is false to allege that concerned employee has been sweeping only 3715 sq.ft. on the other hand he is sweeping more than 4,000 sq.ft. Though the Respondent alleged that they have measured the area with the Engineer, the said report of the panel engineer cannot be relied on as the same has been done behind the back of the office bearer of Petitioner Union or the concerned employee. The carpet area of 3715 sq. ft. does not include the staircase, toilets, parking place and customer's pathway from entrance to bank branch. On the other hand, the concerned employee is required to sweep staircase, toilets, parking place and customer's pathway from entrance to bank branch. Further the front corridor is measuring 300 sq.ft. area which has not been included in the carpet area. If the said 300 sq.ft. area is included the sweeping area is more than 4,000 sq.ft The Respondent/Bank is guilty of suppression of material facts and hence, it does not deserve any indulgence from this Tribunal. Hence, the Petitioner Union prays for an award in their favour.

6. In these circumstances, the points for my consideration are:

"(i) Whether the concerned employee Sri R. Parthasarathy is sweeping more than 4,000 sq.ft. as alleged by the Petitioner Union and whether he is eligible to draw ¾ scale wages?

(ii) To what relief the concerned workman is entitled?"

Point No. 1 :—

7. The dispute in this case is whether the concerned employee Sri R.Parthasarathy is entitled for ¾ scale wages from ½ scale wages or not. Even according to the Petitioner the revised parameters/norms laid down in the communication dated 16-2-95, the Respondent/Bank has clearly stated that floor space area for the purpose of may hereafter be determined as carpet area plus area pertaining to toilets, corridor, staircase and other reasonable areas to be decided by the sanctioning authority which require daily sweeping. The allegation of the Petitioner Union in this case is thet Nungambakkam branch of the Respondent/ Bank has shifted to new premises on 8-10-98 which consists of ground floor and first floor and the area leased out is 4212 sq.ft. and the concerned employee is sweeping the entire area and therefore, as per the revised norms, he is entitled to ¾ scale wages, but the Respondent/Bank has denied the entitlement of the concerned employee and therefore, they have raised this dispute.

8. On the other hand, on behalf of the Respondent it is contended that no doubt, the Respondent/Bank has taken lease of 4212 sq.ft. in the premises, but the carpet area of the building comes to only 3715 sq.ft. namely the ground floor area is 1805 sq.ft. and the first floor area is 1830 sq.ft. which comes to 3715 sq.ft. and however, the wages of the part time sweepers are determined based on the twin parameters of total number of hours worked in a week and total area swept by the part time sweeper. Since the concerned employee has not worked for more than 18 hours and since he has not swept the area of more than 4000 sq.ft., he is not entitled to ¾ scale wages.

9. In order to establish the case, the Petitioner examined the General Secretary of the Petitioner Union as WW1 and marked documents Ex.W1 to W10. Xerox copies of Ex.W1 to W4 are representations given by the concerned employee and also by the Union. EX.W5 is the instruction given by the Respondent/Bank on 16-2-95. Ex.W6 is the copy of Circular 23-2-89 . Ex.W7 is the copy of letter dated 26-8-99. Ex.W8 is the copy of the dispute raised by the Petitioner Union before Assistant Labour Commissioner (Central). Ex.W9 is the copy of reply given by Respondent/ Bank before conciliation. Ex.W10 is the copy of rejoinder given by the Petitioner Union before Conciliation Officer. The concerned employee was also examined as WW2. On the other side, the Respondent examined one Mr. Varghese, who is Assistant Branch Manager of Nungambakkam ,

branch as MW1 and also examined one Mr. Venugopal, Civil Engineer working under M/s. R. Udayakumar, Panel Engineer of the Respondent/Bank and on the side of the Respondent Ex.Ml to M9 were marked. Ex. M 1 is the copy of zonal office communication informing that the Petitioner is eligible to draw ½ scale wages. Ex.M2 is the copy of minutes of discussion held between the management and federation of employees Union including the Petitioner Union dated 27-10-80. Ex.M3 is the copy of Circular issued in the matter of fixation of scale wages and Ex.M4 is the copy of settlement entered into between the Respondent/ Bank and Federation dated 20-7-93 and Ex.M5 is the copy of Circular dated 18-8-93 with regard to career path to PTS and Ex.M6 is the copy of statement showing carpet area of Respondent/Bank at Nungambakkam as per Panel Engineer certificate dated 12-8-03. Ex.M7 is the copy of letter addressed to Respondent/Bank branch regarding confirmation of lease particulars of the branch. Ex.M8 is the rough sketch prepared by MW2. Ex. M9 is the photograph of Nungambakkam branch of Respondent/ Bank.

10. Representative for the Petitioner contended that the concerned employee's wages were fixed in ½ scale wages when he was working in the old premises of the Respondent/Bank at Nungambakkam branch which consists of ground floor only. Subsequently, when the branch was shifted to a new building which consists of ground and first floor with the total floor space of 4212 sq.ft. the concerned employee is entitled to get ¾ scale wages, since he has been sweeping the total area rented out to the Respondent/Bank and the Respondent/Bank has deliberately declined to take into account the carpet area pertaining to toilet, corridors, portico etc. for the purpose of arriving at the total carpet area for fixing fair scale wages to the concerned employee and if these factors are taken into account the concerned employee would definitely become entitled to ¾ scale wages of sub staff cadre as laid down under settlement and also as per Respondent's own Circular instructions. Though the Respondent alleged that they have measured the place with the help of panel engineer and on his report, the carpet area of sweeping is only 3715 sq.ft., the said measurement was taken behind the back of concerned employee and also the Petitioner Union and therefore, no reliance can be placed on these reports. Further, even though the Respondent has examined MW2 Mr. Venugopal, Engineer alleged to have been working under Panel Engineer of Respondent/Bank and though he has stated that he has measured the property on 27-5-2006 without the knowledge of the concerned employee/Petitioner Union and also without informing this Tribunal, the alleged Engineer has measured the property and therefore, this Tribunal cannot rely on the evidence of MW2 or his rough plan filed as Ex.M8. Thus, the Respondent/Bank has not established his case that the carpet area of the building is within 4,000 sq.ft. and therefore, the concerned employee is entitled for ¾ scale wages as claimed by the Petitioner Union.

11. But, as against this, learned counsel for the Respondent contended that it is the positive case of the Petitioner Union that concerned employee is sweeping more than 4000 sq.ft. in the premises of the Respondent/Bank and therefore, the burden of proving that concerned employee is sweeping more than 4,000 sq.ft. area is upon the Petitioner, but on the other hand, they have not produced any single document to show what is the actual sweeping area of the concerned employee; on the other hand, the Respondent has established before this Court the plinth area and also carpet area of the building for the purpose of sweeping. In this case, the Respondent/Bank examined the Engineer to speak what is the carpet area which the concerned employee has been sweeping and it is not established by the Petitioner Union that calculation given by the Engineer is not correct. Though it is alleged that staircase and toilets have not been included in the carpet area, the Engineer, who was examined on the side of the Respondent has clearly stated that even after including the toilet and stair case area, it will not come more than 3800 sq.ft. Under such circumstances, there is no point in the contention of the Petitioner side that the concerned employee is sweeping more than 4000 sq.ft. Further, the learned counsel for the Respondent contended that wages for part time sweepers are determined based on twin parameters namely total number of hours worked in a week and total area swept by the part time sweeper. Therefore, the Petitioner must establish before this Court that the concerned employee has worked for more than 18 hours in a week and he has swept more than 4000 sq. ft. But in this case, the Petitioner Union has not established this fact with any satisfactory evidence. On the other hand, the Respondent has clearly established before this Court that the total area swept by the part time sweeper namely Sri R. Parthasarathy was only below 3,800 sq.ft. and he has worked below 18 hours in a week. Therefore, the concerned employee is not entitled to any relief as claimed by the Petitioner Union.

12. I find much force in the contention of the learned counsel for the Respondent because as argued by him, the wages of the part time sweepers are determined based on the twin parameters namely total number of hours worked in a week by the concerned employee and also total area swept by the part time employee. As per circulars/settlement the part time sweeper is entitled to ¾ scale wages only if he swept more than 4000 sq.ft. that too worked for more than 18 hours in a week. In this case, though the Petitioner alleged that the lease agreement between the Respondent/ Bank and also the landlord is with regard to 4212 sq.ft., it is not established before this Court what is the carpet area in which the concerned employee is sweeping. Though in the Claim Statement, it is stated that he has been sweeping more than 4212 sq.ft. and if the Respondent/Bank is taken into account with regard to area of toilet, corridor etc. for the purpose of arriving at total carpet area, it will come more than 4000 sq.ft., how they have arrived at 4212 sq.ft. is not explained before this Tribunal. No doubt, total area

of the lease is 4212 sq.ft, but, on that ground we cannot say that carpet area as agreed between the federation and also the management will include total area namely plinth area of the building. The MW2 Engineer has stated that for taking carpet area, they have to exclude the area of pillars and thickness of the wall etc. and after excluding all these things and after including the area of toilet and stair case, it will come only 3800 sq.ft. Under such circumstances, if the concerned employee wants to get ¾ scale wages, the burden of proving the fact that concerned employee is sweeping more than 4000 sq.ft. and is working for more than 18 hours in a week is upon the Petitioner union. But, as I have already stated the Petitioner union has not established that the concerned employee has been sweeping more than 4000 sq.ft and working for more than 18 hours in a week. Under such circumstances, I find this point against the Petitioner union.

Point No. 2:—

The next point to be decided in this case is to what relief the Petitioner is entitled ?

13. In view of my foregoing findings that the Petitioner union has not established before this Court that the concerned employee is sweeping more than 4000 sq.ft. area in the Respondent/Bank, I find the concerned employee is not entitled to get ¾ scale wages as claimed by Petitioner union. No Costs.

14. Thus, the reference is answered accordingly.

(Dectated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25th August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioners : WW 1 Sri E. Arunachalam
WW2 Sri R. Parthasarathy

For the Respondent : MW1 Sri K. V. Varghese
MW 2 Sri R. Venugopal

Documents Marked:—

For the I Party/Petitioner :—

Ex. No.	Date	Description
W1	11-10-98	Xerox copy of the representation given by concerned Employee for enhanced scale wages
W2	Nil	Xerox copy of the representation given by concerned Employee for enhanced scale wages
W3	15-01-01	Xerox copy of the representation given by union for enhanced scale wages of concerned employee
W4	22-05-02	Xerox copy of the reminder given by union for enhanced scale wages of concerned employee
W5	16-02-95	Xerox copy of the circular of Respondent/Bank in the matter of fixation of scale wages tn PTS
W6	23-02-89	Xerox copy of the circular of Respandent/Bank Regarding payment of scale wages
W7	26-08-99	Xerox copy of the letter from Head Office of Respondent/Bank to Nungambakkam Branch regarding lease deed and payment of rent
W8	25-03-03	Xerox copy of the ID raised by union before Assistant Commissioner of Labour (Central)
W9	09-01-04	Xerox copy of the reply given by respondent before Assistant Commissioner of Labour (Central)
W10	30-06-04	Xerox copy of the rejoinder filed by Petitioner union

For the II Party/Management :—

M 1	07-01-99	Xerox copy of the letter from Zonal Office Informing concerned employee is entitled for $^1/_2$ scale wages
M2	27-10-80	Xerox copy of the minutes of discussion held between Respondent/Bank and Union in fixation of scale wages to PPTS
M3	28-10-80	Xerox copy of the circular issued by Respondent/Bank in fixation of scale wages to PPTS
M4	20-07-93	Xerox copy of the settlement entered into between Respondent/Bank and Union in filling up vacancies of PTS
M5	18-08-93	Xerox copy of the circular to Regional/Zonal Managers on career path to PTS
M6	12-08-03	Xerox copy of the statement of carpet area of Nungambakkam Branch of Respondent/Bank certified by Panel Engineer
M7	26-08-99	Xerox copy of the letter from Head Officer of Respondent/ Bank to Nungambakkam Branch Regarding lease deed and payment of rent
M8	Nil	Rough plan of sweeping area given by Panel Engineer
M9	Nil	Photographs of Nungambakkam Branch of Respondent/Bank.

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4738.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 28/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था ।

[सं. एल-12011/15/2002-आई. आर. (बी- II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4738.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2002) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 13-11-2006.

[No. L-12011/15/2002-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Presiding Officer : R. N. Rai

I.D. No. 28/2002

In the matter of :—

Shri Jeet Singh,
C/o. Central Bank Staff Union,
The General Secretary Central Bank Staff Union,
Central Bank Building,
Chandani Chowk,
Delhi-110006.

Versus

The Zonal Manager,
Central Bank of India,
Link House, 4, Bahadur Shah Zafar Marg,
New Delhi-110002.

AWARD

The Ministry of Labour by its letter No. L-12011/15/2002-IR (B-II) Central Government dt. 29-4-2002 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the action of the management of Central Bank of India, New Delhi in not paying difference of wages to Shri Jeet Singh, Clerk for the period of his suspension from 26-08-1983 to 01-03-1994 is just, fair and legal ? If not, what relief the concerned workman is entitled to."

The workman applicant has filed claim statement. In the claim statement it has been stated that there is a typographical error in the above terms of reference in as much as that the date from which the workman was suspended has been mentioned as 26-03-1983 instead of 26-08-1983 and the Union has written to the Ministry of Labour to issue a corrigendum to the order of the reference accordingly.

That Shri Jeet Singh (hereinafter referred to as the workman was appointed as a Clerk in Central Bank of India w.e.f. 29-05-1978 and during all the period, relevant to the present dispute, his service conditions were governed by the provisions of the Sastry Award, as modified in the Desai Award and as further modified/revised in the subsequent BPS entered into between the management of various banks including Central Bank of India and their workmen from time to time.

That in August, 1983 when the workman was posted at Madipur, New Delhi Branch of the Bank, he was placed under suspension on the ground of his alleged involvement in a criminal offence under Ss. 302/307/324/341 IPC.

That the alleged criminal offence in connection with which the workman was suspended by the above referred Memo related to a private episode in the locality of the residence of the workman and had nothing to do with his employment in the Bank nor did it take place in the course of discharge of his duties as an employee of the Bank.

That after Police investigations in the matter, the workman was put on trial before a criminal court and while the trial proceedings against the workman was still going on, the management of the Bank revoked his suspension by a memorandum dated 01-03-1994.

That since it was stated in the above referred memorandum of revocation of workman's suspension that "The matter of wages for the suspended period shall be decided by the Bank only after outcome of the court's case", the workman waited for the verdict of the trial court before claiming his full wages for the period of his suspension.

That ultimately, the Court of Additional Sessions Judge, Delhi, before whom the workman was being tried, acquitted the workman by an order dated 24-09-1999, the concluding/operative part of which is being extracted in Annexure-W/3 hereto. Full judgment/order of the Court will be produced if and when required by the Hon'ble Tribunal.

That on receipt of certified copy of the acquittal order of the trial court, the workman furnished its copy to the bank with his letter dated 19-11-1999, thereby also claiming payment of his full wages minus the subsistence allowance for the entire period of his suspension. A copy of the

workman's above referred letter dated 19-11-1999 is enclosed as Annexure W-4 hereto.

That on receipt of the Bank's above memorandum dated 24-06-2000, the workman submitted to the bank another letter dated 14-08-2000, thereby reiterating his claim/entitlement to payment of his full pay and allowances for the period of his suspension.

That as the management neither responded to the above letter of the Union nor otherwise showed any inclination to settle the matter amicably; the union raised an industrial dispute in the matter before the Assistant Labour Commissioner.

That the sole ground on which the workman was suspended as per management's order dated 26-08-1983 was his alleged involvement in criminal offence, of which he was acquitted by a competent court of law after full trial by order of the ADJ, Delhi dated 24-09-1999, the said ground for his suspension vanished with his acquittal and accordingly, he became automatically entitled to be treated on duty and to be paid his full pay and allowances minus the subsistence allowance paid to him for the period his suspension from 26-08-1983 to 01-03-1994 when his suspension was revoked by management during the pendency of the criminal proceedings against him. Hence, the action of the management in not paying to the workman the difference of his full wages and subsistence allowance for the period of his suspension after his acquittal in the criminal case was manifestly illegal, arbitrary and unjustified.

That the matter of wages for suspension period shall be decided by the bank only after the outcome of the court's case, there was no valid reason for the management not to release the full wages of the workman less the subsistence allowance paid to him during the period of his suspension once the criminal case pending against him in the trial court ended in his acquittal by the concerned court and such action of the management was, therefore, arbitrary, malafide, capricious and in colourable exercise of executive fiat.

While rejecting the claim of the workman for payment of difference of his full wages and subsistence allowance for the period of his suspension, consequent upon his acquittal in the criminal case, all that was stated in the bank's letter dated 04-06-2000 was that "he will not be entitled for difference in wages *and increments during* the suspension period" without giving any reason whatsoever as to why and under what provision, the workman would not be entitled to be paid the difference of his full wages and subsistence allowance for the period of his suspension pending which he had been suspended and was kept under suspension from 26-08-1983 to 01-03-1994.

The action of the management in denying to the workman the payment of difference of his full wages and subsistence allowance for the period of his suspension was unfair and unjustified also for the reason that the suspension of the workman was prolonged for more than 10 years before being lifted on 01-03-1994 during the pendency of the trial proceedings against him, whereas the suspension of the workman should have been lifted long back if the management had followed the Government of India directions to the bank to review the cases of suspended employees where the suspension was pending criminal investigations/criminal trial.

The action of the management in not paying full wages of the workman minus subsistence allowance for the period of his suspension was unfair, unjustified and not permissible under any provisions of Awards and BPS governing his service conditions for the reason that in the first instance the criminal offence on account of which the workman was suspended had no relation/connection with the conduct of the workman vis a vis the bank but was in connection with a private episode in his residential locality and accondly, no disciplinary proceedings could be or was initiated against the workman on account of his alleged act of which he was tried and acquitted, at any time before or after his acquittal.

The management has filed preliminary objections. In the objections it is stated that the present case is liable to be dismissed at the very outset as Shri Jeet Singh was acquitted by giving benefit of doubt. The acquittal of the workman was not simple acquittal on the merits of the case but it was acquittal by giving benefit of doubt only. The 1st BPS relating to disciplinary action and procedure provides that :

> "If he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowance as the management may deem proper and period of his absence shall not be treated as a period spent on duty unless the management so direct".

That the present case is also liable to be dismissed on the preliminary ground that Shri Jeet Singh has been promoted notionally w.e.f. 28-12-2000 and his service conditions are governed by Central Bank of India Officer Employees (conduct, discipline and appeal) Regulations 1976. Hence he is not governed by Industrial Dispute Act.

That it is pertinent to mention here that presently his service conditions are governed by the Central Bank of India Office Employees Conduct, discipline Appeal Regulations, 1976.

That it is pertinent that the criminal offences for which the workman was suspended did not take place in the course of discharge of his duties as an employee of the bank, however the charge and trial of a workman u/s 302/307/34 IPC itself tarnishes the image of the bank in the public eye. Such an offence involves moral turpitude and constitutes "misconduct" within the acts of misconducts specified under clause 19.5 (J) of the BPS.

That it is submitted that the management has reviewed his case, after watching progress of the criminal case

against the workman and he was reinstated as a result of review made by the Central Office of the respondent. It is pertinent to mention here that a committee constituting of three officials of the bank has reviewed his case and when considered appropriate, he was reinstated vide memorandum dated 01-03-1994.

That it is reiterated that the criminal offences for which the workman was booked by Police authorities and was suspended, did not take place in the course of discharge of his duties as an employee of the bank, however the charge and trial of a workman under section 302/307/34 IPC itself tarnishes the image of the bank in the public eye. Such an offence involves moral turpitude and constitutes "misconduct" within the acts of misconducts specified under clause 19.5 (J) of the BPS.

That it is reiterated that the acquittal of the workman by the Court was not honourable and the workman was acquitted by giving benefit of doubt only. On reading the order of acquittal of the workman wherein the workman was acquitted by giving benefit of doubt only, in the light of para 19.3 (c) of the BPS, it is apparent that the workman is not entitled for the wages as claimed by him and the action of the management is in accordance with law.

That it is denied that memorandum dated 14-06-2000 (which is mentioned by workmen dated 24-06-2001) was sent to the workman in reply to letter dated 19-11-1999 to inform him that he would not be entitled for difference in wages for the period of his suspension. This relates to another matter filed by the same workman against the management which is pending before this Hon'ble Tribunal. The same is not relevant to the present matter.

That it is however submitted that the allegations made by the workman in his letter dated 14-08-2000 and in the letter of the union dated 25-9-2000 that the workman is not entitled for difference in wages for the period of his suspension are wrong and vehemently denied. It is reiterated that *vide* memorandum dated 24-07-2000 the management informed the workman that the decision had been made in terms of clause 19.3.(c) of the 1st BPS. The letter dated 24-07-2000 was delivered to Shri Jeet Singh on 24-07-2000 itself and for reasons best known to Shri Jeet Singh he did not take any cognizance of this letter in his representation dated 14-08-2000.

That it is wrong and denied that the ground for suspension vanished with his acquittal and he automatically became entitled to be treated on duty and to be paid his full pay and allowances minus the subsistence allowances paid to him for the period of his suspension from 26-08-1983 to 01-03-1994. The management craves leave to refer to the submissions made earlier in the reply in this respect. It is further wrong and denied that the action of the management is manifestly illegal, arbitrary or unjustified as already explained above.

That it is wrong and denied that there was no valid reason for the management not to release the full wages of the workman less the subsistence allowance paid to him during the period of his suspension. The acquittal of workman Shri Jeet Singh was not honourable but with benefit of doubt. It is wrong and denied that the action of the management is arbitrary, malafide, capricious or in colourable exercise of executive fiat.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workman that Shri Jeet Singh was appointed as a Clerk in management bank w.e.f. 29-05-1978. His conditions of service had been governed by the provisions of the Sastry Award, Desai Award and BPS before promotion to officer in Scale-I w.e.f. 28-12-2000 by order dated 30-04-2001 and actually reported as Officer on 08-05-2001. The issue is relating to the period of suspension when the workman was in the clerical cadre.

That the workman was placed on the suspension *vide* order dated 26-08-1983. The suspension was revoked on *vide* order dated 01-03-1994 and by this order of revocation it was stated that the period of suspension would be treated at the outcome of the criminal case. On acquittal the workman is entitled to full pay and allowance for the period of suspension *i.e.* 26-08-1983 to 01-03-1994.

That the workman was acquitted by judgment dated 24-09-1999 with benefit of doubt. By letter dated 19-11-1999 the workman furnished the copy of judgment of acquittal and claimed full pay and allowances for the period of suspension. By reply dated 24-06-2000 the bank informed the workman that he would not be entitled for the difference of wages. By letter dated 14-08-2000 the workman again demanded full pay and allowances and the union also demanded the same by letter dated 25-09-2000.

Clause 19 .3 (c) of 1st BPS deals with the situation. Clause 19 .3(c) is hereunder :—

> "If he be acquitted it shall be open and the management to proceed against him under the provisions set out below in clause 19.11 and 19.12 infra relating to discharge. However, in the event of the management deciding after inquiry not to continue him in service, he shall be liable only for termination of service with three months pay and allowances in lieu of notice, and he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence

allowance as he has drawn and to all other privileges for the period of suspension provided that if he acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as spent on duty unless the management so direct."

It was submitted that it was open to the bank to proceed with inquiry an acquittal under clause 19.3(c), quoted above, of 1st BPS by holding inquiry, if the banks decides not to continue him in service and decides to terminate his services by giving three months pay and allowances in lieu of notice, and in that event the period of suspension is to be treated as period spent on duty and full pay and allowances are to be paid; if acquitted on benefit of doubt a portion of such pay and allowances are to be given as may deem proper. Here what important is the decision to hold inquiry and the decision to terminate the services. Only when the services are terminated after inquiry full pay or portion of pay and allowances as deemed proper is payable. Otherwise full pay and allowances on acquittal is payable for the period of suspension. This is the sum and substance of clause 19.3(c). The essence of this clause 19.3(c) is termination of service after inquiry for full pay or portion of pay and allowances are payable on acquittal. Here is there is no charge sheet no inquiry after acquittal and therefore under clause 19.3(c) could not have been denied the full pay and allowances as done by the impugned order dated 14-06-2000. Rather the workman was admittedly promoted to scale I as Officer. Hence, the workman is entitled to full pay and allowances for the period of suspension.

Undisputedly annual increments fallen during the period of suspension were not added in fixing the subsistence. Stoppage of increment is a punishment under clause 19.9 (d) of the BPS.

My attention was drawn to 197 kLIC page 923 Gujrat. It has been held that suspension on account of criminal prosecution—acquittal—employee would be entitled to full pay for suspension period—there is no concept of "honourable acquittal" or "Full exoneration" in criminal trial.

My attention was to 1977 LIC Page No. 1315 (J&K). It has been held that suspension—involvement in a criminal case in a family dispute–Later on, acquitted–entitled to full salary for suspension period the term acquittal order that "prosecution has failed to prove the case beyond reasonable doubt" could not be read in isolation but had to be read with infirmities pointed out in the prosecution case.

My attention was also drawn to 2000 (87) FLR Page No. 603 (BOM) (DB). It has been held that suspension pending criminal prosecution–No departmental inquiry held–entitled to full salary for suspension period—acquittal on benefit of doubt makes no difference.

My attention was further drawn to 1992 LIC Page 594 Delhi that suspension pending criminal prosecution—No departmental inquiry held–entitled to full salary for suspension period–acquittal on benefit of doubt makes no difference.

It was submitted from the side of the management that Clause 19.3 (c) is the settlement between the Banking Industries and the Banking Association. It has binding effect on all the employees of the Banking Industries. No benefit to the workman can be given against this provision.

It has been specifically mentioned in 19.3 (c) that in case an employee has been acquitted of offence of moral turpitude on the ground of benefit of doubt he may be paid such portion of such pay and allowance as the management may deem proper and the period of his absence shall not be treated as spent on duty unless the management so directs. In the instant case the management ordered that the absence shall not be treated as spent on duty during the period of his suspension.

Clause 19.3(c) vests the management with a right to order for treating the suspended employee as spent on duty. The management may not so order. It is absolute discretion of the *management* to pass such order as it deems fit. The management has not treated the workman on duty during his suspension period. The discretion absolutely vests in the management in view of the settlement reached between the All India Banking Association and the Banks. This agreement is binding on both the parties. The workman cannot claim any amount against this settlement. The management has specifically ordered that the workman shall not be treated on duty during his suspension period. So there is no question of making payment of full wages minus the suspension allowance which has already been paid to the workman.

It has been held in 2005 (SI) DRJ 199 that the petitioner has not rendered service to his employer and hence he is not entitled to claim wages for the period of his absence.

It has been held in (1996) II SCC 603 in Ranchobgi Chaturji *Vs.* Superintending Engineer Gujrat Electricity Board that the question of back wages would be considered only if the respondents have taken any action by way of disciplinary proceedings and the action was found to be unsustainable in law in which he was unlawfully prevented from discharging his duties.

In the instant case the workman involved himself in the crime and that was the ground for his not being in service of the respondents. He was suspended in view of statutory rules applicable to the situation. U/S 10 (1) of the Banking Act it has been provided that the management may take any action in case an employee is involved in an offence of moral turpitude. The workman was prosecuted in a criminal offence u/s. 302/307/324/34 IPC. Such an offence is an offence of moral turpitude.

The workman had disabled himself from rendering services on account of involvement in a criminal case. It has been held in (1997) 3 SCC 636 Krishna Kant Vs. State of Maharashtra and others. It has been held that it is true that when a government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period as contended by Shri Ranjit Kumar? The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability.

The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book.

It was submitted that the workman was acquitted of the charges as legal evidence was insufficient to bring home the guilt beyond doubt or full proof. It is the duty of the management to prevent degeneration of morality, integrity and efficient performance of public duty. The reputation of the workman gained notoriety when he was involved in an offence of moral turpitude. It was the conduct of the workman that led to his prosecution for the offence under the Indian Penal Code.

The very cause for suspension of the petitioner was his involvement in a criminal offence. He was acquitted by giving benefit of doubt as there may be lack of sufficient evidence or there may be technicalities on the ground of which benefit of doubt was given to him. In such circumstances amount of back wages cannot be as a matter of course. The management may treat suspension period as period not on duty in view of clause 19.3 (c).

It was submitted that perusal of the judgment of acquittal is necessary. I have perused the judgment of the Trial Court, FIR No. 142103 u/s. 302/307/304 IPC. The accused has been acquitted by being given benefit of doubt. The Session Court has held that the complainant side was the aggressor and the injury were caused by the accused persons in the exercise of right of their private defence. It is settled law that the right of private defence is a very valuable right and it should not be construed narrowly. It has been further held that in case the evidence as a whole creates reasonable doubt to the existence of a right of private defence the accused is entitled to be acquitted.

The Session Court has further observed that the prosecution case has become doubtful due to delay in the lodging of FIR, sending special report to the Area Magistrate and non-disclosure of the name of the accused persons as the real assailants to the Doctor on out by injured in spite of the fact that accused persons were known to them very before.

It has been further held by the Session Court that the complainant side and their supporters were the real aggressor who trespassed into their house with deadly weapons in order to fulfill their grudge which they were having against the accused persons due to constant throwing of the refuse. The accused persons have also sustained injuries and they caused injuries to the complainant side in their private defence.

The Session Court has acquitted the workman not only by giving benefit of doubt but by holding that the injuries by the accused side have been caused in private defence and the complainant side was aggressor. They trespassed into the house of the workman with deadly weapons and injuries were caused to each other by both the sides. None died on the spot.

It was submitted that the workman cannot be said to be of criminal mentality. The complainant side has been held aggressor. It is settled law that a person has a valuable right to private defence and in case he apprehends that he would be attacked by deadly weapons he is not to sit silent and to attack after receiving blows. The findings of the Session Court is that the complainant side was aggressor. Unfortunately fatal injuries was caused to the complainant side and one person expired. Such cases should not be treated to be a case in which accused is acquitted by giving benefit of doubt. Injuries if any caused by the workman are not purported to cause murder but in exercise of the right of private defence. So the case of the workman is not a case of acquittal of benefit of doubt being given.

It was submitted that in the facts and circumstances of the case the management cannot exercise the powers contained in Clause 19.3 (c) of 1st BPS. This clause is attracted in case there is acquittal based on technicalities and on being given benefit of doubt. There is categorical findings of the Session Court that the complainant was aggressor and they trespassed the house of the workman with deadly weapons. It was natural for him to resist and in such resistance fatal injuries unfortunately were caused to one of the deceased.

It was further submitted that the workman has not been acquitted by being given benefit of doubt but he has been acquitted on the fact that the injuries have been caused in exercise of private defence. So this clause is not attracted and the workman cannot be deprived of his due wages during the period of his suspension.

It was further submitted that this clause is for a man who is of criminal mind and who commits offence of moral turpitude. In the instant case no offence of moral turpitude has been committed by the workman. He has simply exercised his right of private defence and the workman has caused injuries in defence. He did not attack the deceased with mala fide motive to kill him. But in the circumstances

of the case he was constrained to use force to save his own life.

It was further submitted from the side of the workman that the law cited by the management is not applicable as the workman has not involved himself in the crime but he was constrained to get involved. He is not disabled himself from rendering service on account of his involvement. There is no intention of the workman to involve in any crime. He has not been acquitted of the charges as legal evidence was insufficient to bring him the guilt of the accused. It cannot be said that there is any degeneration of the character of the workman.

The workman was not notorious and death was caused not with *mala fide* intention but in the spur of moment being surrounded by the persons of the complainant side with deadly weapons. The law cited by the management is not applicable in the facts and circumstances of the present case.

In the facts and circumstances of the case the provision of clause 19.3(c) cannot be invoked against the workman as he has not been acquitted by being given benefit of doubt. The management has not considered this aspect of acquittal. It was imperative for the management to go through the judgment of the Session Court and to ascertain whether the workman performed himself in a criminal case or he was compelled to get involved. The management has not filed copy of any speaking order or any order in which such points have been taken into consideration while refusing payment of full wages to the workman during the period of his suspension from 26-08-1983 to 01-03-1999. The workman is entitled to get full wages for the period of his suspension as he has not been acquitted by being given benefit of doubt. He has been acquitted on the ground that he exercised his right of private defence and injuries were caused to the deceased. The order of the management cannot be held to be fair in the eye of law. It is not a valid and legal order. It is set aside.

The reference is replied thus :—

The action of the management of Central Bank of India, New Delhi in not paying difference of wages to Shri Jeet Singh, Clerk for the period of his suspension from 26-08-1983 to 01-03-1994 is neither just nor fair nor legal. The workman applicant is entitled to get full wages during the period of his suspension from 26-08-1983 to 01-03-1999. The management is directed to make payment of the entire wages minus subsistence allowance already paid within two months from the publication of the award.

Award is given accordingly.

Date : 09-11-2006.

R. N. RAI, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4739.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 114/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था ।

[सं. एल-12012/79/2005-आईआर (बी- II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4739.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Canara Bank and their workmen, received by the Central Government on 13-11-2006.

[No. L-12012/79/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 14th August, 2006

PRESENT :

K. Jayaraman, Presiding Officer

Industrial Dispute No. 114/2005

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Canara Bank and their workmen]

BETWEEN

Sri. J. Ravi Thanga Pandian : I Party/Petitioner

AND

The Deputy General Manager, Canara Bank, C.O., Madurai : II Party/Management

APPEARANCE

For the Petitioner : M/s. K.V. Ananthakrushnan, Advocate

For the Management : M/s. T.R. Sathiyamohan, Advocate.

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-12012/79/2005-IR (B-II) dated 24-10-2005 has

referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:—

"Whether the punishment of compulsory retirement from service imposed against Shri J. Ravi Thanga Pandian by the management of Canara Bank, Madurai is legal and justified? If not, to what relief the workman is entitled.?"

2. After the receipt of the reference, it was taken on file as I.D.No.114/2005 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was employed as a clerk in the Udangudi branch of the Respondent Bank. While so, on 2-2-99 he was charge-sheeted and placed under suspension on the alleged misconduct of not remitting Rs. 800 obtained from S.B. account customer Smt. A. Rajammal. A domestic enquiry was conducted and the Enquiry Officer gave a finding that the charges levelled against the Petitioner was proved. The Disciplinary Authority concurred with the findings of the Enquiry Officer by an order dated 31-3-2000 dismissing the petitioner from service. In the appeal preferred against that order, the Appellate Authority by an order dated 31-10-2000 dismissed the appeal modifying the punishment from dismissal to compulsory retirement. The charge framed against the petitioner is that when he was working as a clerk at Mudalur Branch on 4-6-98 he has made an entry in the S.B. passbook of Smt. A.Rajammal S.B. Account No.129 of Mudalur branch for Rs.800 and made the balance for that day as Rs.3019.60 in the S.B. ledger sheet of S.B. Account No.129 there was no corresponding entry for Rs.800 as on 4-6-98 and the branch also has not received any remittance for this account. Further, in S.B. ledger sheet of 129 he has made an entry for Rs. 800 making the balance as Rs. 3019.60 as on 14-6-98 and as 14-6-98 happens to be a Sunday there could be no inward remittance. Thus, the Petitioner has misappropriated a sum of Rs. 800 meant for remittance into the said S.B. account with the bank by misusing official position and by making false entries in S.B. passbook of customer and in S.B. ledger sheet of the bank using the gullibility of the customer. In the enquiry, respondent examined three witnesses and marked 19 documents. The delinquent employee also has given evidence and marked DE1 to DE3. But the Enquiry Officer on a perverse finding held that the Petitioner is guilty of the misconduct alleged against him. The Disciplinary Authority without applying his mind when the objection raised by the Petitioner and without consideration of records accepted the perverse findings of the Enquiry Officer and passed an order of dismissal against the Petitioner. The Appellate Authority has also without applying his mind accepted the perverse findings of the Enquiry Officer but modified the order of dismissal to that of compulsory retirement. Therefore, the order passed by the Disciplinary Authority and Appellate Authority are illegal and liable to be set aside. The alleged contents of the complaint given by Smt. Rajammal was neither proved nor established before the enquiry. On 15-9-99 the so called complainant denied the contents of the complaint and explained the circumstances in which she was made to sign the complaint at the request of the officer was neither marked nor the complainant summoned to ascertain the truth, and the Enquiry Officer omitted to record the contents of the letter dated 15-9-99 which is a gross violation of principles of natural justice. Though the witnesses had spoken in the chief examination about the identification of the initial and signature, in the cross examination, they could not identify the initial which authenticated the entry made on 14-6-98 and 6-7-98 in the S.B. ledger sheet and they could not assure the handwriting found in S.B. account No.129 are that of the petitioner. Further, they have also admitted that there was no documentary proof for remittance of Rs. 800 by the complainant. The Enquiry Officer based his findings on presumption and assumption and on no evidence. The Disciplinary Authority failed to consider the letter dated 20-11-98 written by the complainant was after 5-11-98 where she had already withdrawn the amount of Rs. 2000 on 6-7-98. Therefore, had the complainant already given the complaint on 5-11-98 then she would not have written the letter dated 20-11-98. Merely a fraudulent transaction has taken place, the concerned employee cannot be made as culprit putting the blame on him. The Petitioner is not guilty of charges levelled against him nor he had committed the charges. Hence, for all these reasons, the Petitioner prays this Tribunal to set aside the order of compulsory retirement and to reinstate him into service with continuity of service, back wages and all other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner joined the services of II Party/Management on 17-9-88 as a clerk in Arumuganeri branch and he was working at Mudalur branch from 26-5-97 to 20-8-98 and for the misconduct committed by him in the said branch he was suspended from service w.e.f. 26-11-98. Since no explanation was given by the Petitioner, a departmental enquiry was ordered to be conducted against him. The departmental enquiry was conducted fully in conformity with the principles of natural justice by providing full opportunity to the Petitioner to defend his case. After the enquiry, the Enquiry Officer has come to the conclusion that the I Party is guilty of charges levelled against him and submitted his report. The Disciplinary Authority after affording a personal hearing and after considering the gravity of the charges proved against him imposed the punishment of dismissal by his order dated 31-3-2000. In the appeal preferred by the Petitioner, Appellate Authority after giving a personal

hearing and taking into consideration the entire materials on record has modified the punishment from that of dismissal to compulsory retirement by his order dated 6-11-2000. It is false to allege that the Petitioner has discharged his duties to the satisfaction of his superior officials. He had earlier committed a similar misconduct of misappropriation and also tampering of records and upon enquiry, he was imposed with the punishment of stoppage of four increments cumulatively. The Enquiry Officer arrived at his finding only after a detailed consideration of entire relevant materials on record as well as objection raised by the Petitioner. The Disciplinary Authority has also passed the order after going into the evidence and objections raised by the Petitioner. Therefore, the order of dismissal is perfectly legal and justified. In the letter Smt. A. Rajammal complainant had categorically stated that she had given Rs. 800 in 100 rupee denomination and her S.B. account pass book to the Petitioner for remitting the amount in her account. The witness examined on the side of the Respondent/Bank has deposed that handwriting in the passbook is that of the Petitioner only. Even though Enquiry Officer issued notice to Smt. Rajammal to appear before him and even though she has received the notice, she has not appeared before the Enquiry Officer. She has also not appeared on the adjourned dates also before the Enquiry Officer. Therefore, there is no perversity in the findings and the charge has been conclusively proved in the enquiry. Since the investigating officer who was examined as MW3 has categorically deposed that complainant has given a voluntary statement before him, which was not disproved by the Petitioner, only on the overwhelming evidence, the Enquiry Officer concluded that the Petitioner is guilty of the said charge. Admittedly, the Petitioner was handling S.B./Current Accounts and DDs department during the month of June, 1998. He has also during the interrogation confirmed that almost all the entries in the pass book of Smt. Rajammal were made by him except one entry dated 4-6-98 in the pass book and the entry dated 14-6-98 in the ledger sheet which is not acceptable because he was the ledger clerk on those two days. Hence, his deposition about the initial is not acceptable as the person who is well known to the Petitioner's handwriting has clearly deposed that the entries were made by the Petitioner. The findings of the Enquiry Officer is strongly based on evidence of the witnesses and also documentary evidence taken on record. Therefore, it is clearly established that the Petitioner has made fictitious entry in the pass book/ledger sheet and handed over to the complainant. He had also altered the date of 4-6-98 to 14-6-98 in the ledger sheet without knowing the fact that 14/6 is Sunday to cover up the fraudulent acts done by him. There is no illegality in the order passed by the Appellate Authority as alleged by the Petitioner. Even after imposing the punishment at the first instance, he has not corrected himself and resorted to commission of similar type of misconduct. Therefore, the Respondent prays to dismiss the claim with costs.

5. In these circumstances, the points for my consideration are —

(i) "Whether the punishment of compulsory retirement from service imposed on the Petitioner by the Respondent/Bank is legal and justified?

(ii) To what relief the Petitioner is entitled?"

Point No. 1:

6. The admitted case of both sides in this dispute is that the Petitioner who was working as a clerk in Udangudi branch was charge sheeted on 2-2-99 and placed under suspension on the allegation of misconduct that he had not remitted Rs. 800 obtained from a S.B. account customer Smt. A. Rajammal at Mudalur branch on 4-6-98 and further alleged that he has made entry for Rs. 800 making balance of Rs. 3019.60 in S.B. ledger sheet on 14-6-98 as 14-6-98 happens to be a Sunday and there could not be any inward remittance and for this misconduct a domestic enquiry was conducted and the Enquiry Officer has held that charges framed against the Petitioner has been proved and the Disciplinary Authority has dismissed the Petitioner from service on 31-3-2000 by his order and the Appellate Authority even though confirmed the order has modified the punishment from dismissal to compulsory retirement. On the side of the Petitioner no document was filed and on the side of the Respondent/Management Ex. M1 to M32 were marked.

7. Learned counsel for the Petitioner contended that though the Respondent/Bank charge sheeted against the Petitioner that he has misappropriated the amount given by the customer of S.B. account No. 129 of Mudalur branch namely Smt. A. Rajammal, the charge has not been established before the domestic enquiry and the so-called complainant has not been examined to establish the case. When the Respondent/Bank has not at all proved the allegation against the Petitioner, it cannot be said that the charge framed against the Petitioner has been proved. Since the Mudalur branch is a small branch and in village branches it is quite normal that all the staff members used to help the customers in filling up the challan in remitting cash and on that score, it cannot be said that the Petitioner has received the amount of Rs. 800 from Smt. A. Rajammal and misappropriate the amount. When it is admitted that Smt. A. Rajammal is an illiterate old lady, it cannot be said that the complaint prepared by the officers of the Respondent/Bank has been proved by the investigating officer. No doubt, the investigating officer has been examined in the domestic enquiry, but it is not established before the domestic enquiry that Smt. A. Rajammal has given the complaint after knowing all the contents of the complaint. It cannot be said that with the signature of the complainant, the contents of the document has been accepted by the said complainant. However, the complainant was not examined before the domestic enquiry to establish that, the contents of the complaint has been

given by her and she has not subjected to cross examination by the Petitioner. Under such circumstances, with the evidence given by the investigating officer and other officers, it cannot be said that Respondent/Bank has established the charge levelled against the Petitioner. Since all the witnesses have admitted that staff of the bank are helping the customers in all possible ways, in the interest of customer, it cannot be said that the Petitioner alone was helping the customer Mrs. A. Rajammal and received the amount without remitting the same into the bank.

8. But, as against this, learned counsel for the Respondent contended that co-employee namely Mr. A. Gladstone Jebakumar, Clerk, Sri A. Joseph Raj Leon, an officer and also the investigating officer Mr. K. Venkatesan have clearly stated in their depositions that it is only the Petitioner who has made entries in the ledger sheet dated 14-6-98 and also pass book of the customer dated 4-6-98. Thus, from the documentary evidence and also from the oral evidence given by the witnesses, the Enquiry Officer has come to the conclusion that it is only the Petitioner who received the amount from the customer Smt. A. Rajammal on 4-6-98 and he has misappropriated the said amount and only to safeguard his interest, he again made an entry in the ledger sheet on 14-6-98, which falls on Sunday and therefore, it cannot be said that the charge framed against the Petitioner has not been proved by the Respondent/Bank in the domestic enquiry. He further contended that it is admitted that during 4-6-98 and 14-6-98 the Petitioner alone had looked after the S.B. account and also written the ledger. Further, it is the clear admission of the Petitioner during domestic enquiry that he has made all the entries in the pass book and ledger namely Ex. M2 and M3 except the entries made on 4-6-98 and 14-6-98. MW1 namely the co-clerk in his chief examination admitted that entry on 14-6-98 appeared to be of the Petitioner's handwriting and MW2 namely an officer of Respondent/Bank has also admitted that entries made on 14-6-98 in Ex. M2 were made by the Petitioner. Though MW 1 namely co-clerk during the cross examination has stated that he do not know who has made initial in the ledger sheet and pass book for the entries made on 4-6-98 and 14-6-98, on that score, it cannot be said that he has admitted the handwriting in Ex. M2 and M3 namely ledger sheet and also pass book are that of the Petitioner. Further, the Petitioner who was the clerk during that period has to say who had made entries in the ledger sheet because it is he who was looking after the ledger posting and also pass book posting during that period. It is further argued that with the available evidence, the Respondent/Management has established the case against the Petitioner. Further, during the domestic enquiry, though the Enquiry Officer has sent notices to Smt. A. Rajammal to appear before the enquiry and to give evidence with regard to her complaint, she has not turned up. Even though the Enquiry Officer has adjourned the case for twice, the said Smt. A. Rajammal has not appeared before enquiry and on that score, it cannot be said that the Respondent/Bank has not proved the charges levelled against the Petitioner. On the other hand, the investigating officer who received the statement of complainant has clearly stated that complainant has accepted that she has given the complaint and she has also stated that she has given eight 100 rupee notes to the Petitioner along with her pass book and the Petitioner has returned the pass book alone stating that he has misplaced the challan for payment of Rs. 800. Under such circumstances, the Petitioner has not established whether there was enmity against the Petitioner to depose such things before the domestic enquiry. Learned counsel for the Respondent further argued that the Petitioner had made similar misconduct even prior to this incident and had been given punishment for such misconduct. Under such circumstances, it cannot be said that the Respondent/Management has not established the case before the domestic enquiry.

9. But again, the learned counsel for the Petitioner contended that Respondent/Bank has not proved the case against the Petitioner, hence, the question of disproving the charge or attributing motive to the witnesses does not arise for consideration. He also argued that handwriting of the fake or wrong entries in the ledger sheet/pass book has not been established in the domestic enquiry and therefore, it cannot be said that the Petitioner has made the misconduct. Further, on the date of enquiry, the Enquiry Officer has received a letter from Smt. A. Rajammal, but he has not mentioned anything about the contents of the said letter, on the other hand, a copy of the letter which was marked before the Tribunal, wherein it is clearly stated that she had doubt of remittance or to whom had she given the amount clearly establish that she had not given the amount to the Petitioner. Since the complainant had a genuine doubt regarding the remittance of Rs. 800, it cannot be said that the complaint given by the said Smt. A. Rajammal has been proved and it is only the officers of the Respondent/Bank had obtained from the customer to take vengeance against the Petitioner. Further, in this case, the Petitioner has examined himself in the domestic enquiry and he has produced two letters namely Ex. M21 and M22 which are letters of appreciation given by higher officials of the Respondent/Bank. From that it can be ascertained that the Petitioner was a sincere hard worker doing customer service. No doubt, strict rules of evidence act do not apply to domestic enquiry, yet the Respondent/Bank who charged a grave misconduct against the Petitioner has to establish the said charge against him in the domestic enquiry. Even though strong suspicion cannot be allowed to take place of proof. Under such circumstances, at no stretch of imagination it can be said that the Petitioner has committed the said misconduct or misappropriation. Therefore, the findings of the Enquiry Officer is perverse and the punishment imposed by the Disciplinary Authority basing

on the findings of the Enquiry Officer is vitiated. It is further argued that even the Appellate Authority has not gone through the evidence given by the witnesses and he has not applied his mind and he has simply followed the findings given by the Disciplinary Authority. Under such circumstances, the punishment imposed on the Petitioner is excessive and this Tribunal has got every power to interfere in the punishment imposed on the Petitioner.

10. Though I find some force in the contention of the learned counsel for the Petitioner, in this case, from the evidence of MW 1 and MW 2 before the domestic enquiry, it is clearly established that the handwriting in the ledger sheet and pass book dated 4- 6. 98 and 14- 6- 98 are that of the Petitioner. Though MW 2 who is an officer has stated that he cannot assure that handwriting is that of the Petitioner, it cannot be said that his entire evidence will be vitiated. When the Petitioner has not established before the domestic enquiry that all the clerks are access to the ledger sheet and also pass book, it is hard to believe that somebody has made the entry in the passbook and also ledger sheet pertaining to S.B. Account No.129 of Mudalur branch. Further, on a perusal of the document EX. M2 and M3, I find the handwritings are similar. Under such circumstances, it cannot be said that some one, not connected with the Respondent/Bank branch has made entries in the ledger sheet and also the pass book. No doubt, the complainant has not been examined before the domestic enquiry, but the Respondent/Management has taken all steps to examine the said complainant namely Smt. A. Rajammal, but she has not turned up. On that ground, it cannot be said that Respondent/Bank has to take steps to compel the witness to give evidence before the domestic enquiry. Further, from the available documents and the evidence given before the domestic enquiry, I find the charge framed against the Petitioner has been established and I do not find any perversity in the findings of the Enquiry Officer. As such, I find the punishment of compulsory retirement from service imposed on the Petitioner by the Respondent/Bank is legal and justified.

Point No. 2:—

The next point to be decided in this case is to what relief the Petitioner is entitled?

11. In view of my aforesaid findings, I find the Petitioner is not entitled to any relief. No Costs.

12. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected aad pronounced by me in the opea court oa this day the 14th August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Petitioner : Nil

For the II Party/Management :—

Ex. No.	Date	Description
M1	Nil	Xerox copy of the SB subsidiary sheets
M2	Nil	Xerox copy of the SB account No. 129 & ledger Sheet No. 0603232
M3	Nil	Xerox copy of the pass book of S.B. A/c. 129
M4	Nil	Xerox copy of the attendance register folio No. 192
M5	04-06-98	Xerox copy of the shroof book receipts
M6	22-10-98	Xerox copy of the letter 10 HO 171 98 AJRL
M7	Nil	Xerox copy of the statement of Sri J.R. Leons
M8	Nil	Xerox copy of the statement of Rajammal
M9	14-02-98	Xerox copy of the challan for S.B. A/c. No. 129
M10	14-11-98	Xerox copy of the investigation report
M11	13-11-98	Xerox copy of the interrogation statement with Petitioner
M12	20-11-98	Xerox copy of the claim made by complainant
M13	09-02-99	Xerox copy of the 10 HO (S) 18 99 AJRL
M14	30-03-99	Xerox copy of the letter from R & L Section, Of Respondent/Bank at Madurai
M15	13-05-99	Xerox copy of the indemnity of Smt. Rajammal
M16	13-05-99	Xerox copy of the debit slip for Rs. 800 of Mudalur Branch
M17	13-05-99	Xerox copy of the credit slip for Rs. 800 of Mudalur Branch
M18	Nil	Xerox copy of the SA account fraud subsidiary Sheet No. 546578
M19	Nil	Xerox copy of the S.B. A/c. 129 ledger sheet No. 0767284
M20	Nil	Xerox copy of the SB IOL balancing book folio
M21	03-02-95	Xerox copy of the ROC ICGEN 94 95 MSV
M22	21-08-95	Xerox copy of the ROC ICGEN 95 96 MSY
M23	02-02-99	Xerox copy of the charge sheet issued to Petitioner
M24	Nil	Xerox copy of the enquiry proceedings
M25	09-02-00	Xerox copy of the enquiry findings
M26	08-03-00	Xerox copy of the explanation of Petitioner to Enquiry Findings

Ex. No.	Date	Description
M27	31-03-00	Xerox copy of the proceedings of personal hearing
M28	31-03-00	Xerox copy of the order of DGM imposing punishment
M29	30-05-00	Xerox copy of the appeal preferred by Petitioner
M30	31-10-00	Xerox copy of the order of Appellate Authority
M31	06-11-00	Xerox copy of the proceedings of DGM
M32	15-09-99	Xerox copy of the letter from Smt. A. Rajammal to Enquiry Officer

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4740.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 1/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/158/2004-आई. आर.(बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4740.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 13-11-2006.

[No. L-12012/158/2004-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 3rd August, 2006

PRESENT : K. Jayaraman, Presding Officer

Industrial Dispute No. 1/2005

(In the Matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bank of India and their workmen.)

BETWEEN

Sri. S. Imayavarman : I Party/Petitoner

AND

The Zonal Manager, Bank of India, Chennai : II Party/Management

APPEARANCE

For the Petitoner : Sri S. Vaidyanathan, Advocate.

For the Management : M/s. T.S. Gopalan and Co. Advocates.

AWARD

The Central Government, Ministry of Labour *vide* order No. L-12012/158/2004-IR (B-II) dated 23-11-2004 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:—

"Whether the action of the management of Bank of India, Chennai in terminating the services of Shri S. Imayavaraman, Ex-casual labour is legal and justified? If not, to what relief the workman is entitled to ?"

2. After the receipt of the reference, it was taken on file as I.D. No. 1/2005 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was employed as a casual labour-cum-sub-staff in the Respondent/Bank. He joined the service on 5-10-96. He worked in various branches of the Respondent/Bank till 8-5-2003. He was working continuously without any break and thus he has rendered 240 days in a continuous period of 12 calendar months and 480 days in a continuous period of 24 calendar months and thus, he deemed to have attained permanent status. But to his surprise, they have disengaged the Petitioner from 8-5-2003 the Respondent/Management has not followed the mandatory provisions under Section 25F, 25G and 25H of the I.D. Act which is illegal. The work which the Petitioner has done is perennial in nature and he was employed in the sanctioned post. Therefore, the Respondent/Management's denial of employment to the Petitioner is illegal. The Petitioner has not worked in leave vacancy and his employment is not a back door entry. Since the Petitioner was working in permanent sanctioned post and since the work done by him is of perennial in nature, sponsorship through employment exchange is not necessary and the Respondent/ Bank has to maintain seniority list and follow principle of last come —first go. Under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, the Petitioner has deemed to have attained permanent status. Hence, for all these reasons, the Petitioner prays this Tribunal to pass an award directing the Respondent/Bank to reinstate him into service with back wages, continuity of service and all other attendant benefits.

4. As against this, the Respondent in its counter contended that the Respondent/Bank has engaged in banking business and on account of the nature of work

involved it engages services of casuals whenever required depending upon the work exigencies and upon availability of such casuals. The casuals are under no obligation to report for duty every day nor is there any compulsion or obligation on the part of the Respondent/Bank to provide work for those persons every day. As per recruitment rules of Respondent/Management vacancies have to notified to employment exchange for sponsoring candidates and thereafter, selection is made from among the eligible candidates and finally selected candidates are appointed against the vacant posts by the competent authority. As per recruitment rules, subordinate staff candidate should have been sponsored by employment exchange and he should have been found fit in interview. Therefore, the Petitioner raised this dispute only with an intention to circumvent and bypass the above rules and to find a way for back door entry in public employment. It is false to allege that the Petitioner was engaged in regular vacancy and disengagement of the Petitioner cannot be construed as retrenchment under I.D. Act. It is also not correct to say that the Petitioner has rendered 240 days in a continuous period of 12 calendar months and 480 in a continuous period of 24 calendar months and therefore, the question of attaining permanent status does not arise at all. Seniority claimed by the Petitioner is totally irrelevant. Section 25F, 25G & 25H of I.D. Act are not applicable in the present case. Hence, compliance of the said statutory provisions do not arise at all. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

(i) "Whether the action of the Respondent/Bank in terminating the services of Petitioner is legal and justified?"

(ii) "To what relief the Petitioner is entitled?"

Point:—

6. This dispute was pending from 5-1-2005. The Petitioner has not represented in any of the hearings posted for enquiry. Lastly, when the matter was posted on 31-7-2006 also there was no representation on behalf of the Petitioner and the Respondent objected for the adjournment. Therefore, the Petitioner was called absent and set ex parte.

7. In these circumstances, the point for my determination is—

"Whether the Petitioner has established his contention that he has been terminated by the Respondent/Management illegally or not?"

8. Since the Petitioner has not appeared before this Court to establish his contention and since no document was filed before this Court to establish the contention of the Petitioner that he was terminated illegally, I find there is no substance in the contention of the Petitioner in the Claim Statement that he has been illegally terminated by the Respondent/Management. Therefore, I find the Petitioner is not entitled to any relief as prayed for.

9. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected the pronounced by me in the open court on this day the 3rd August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—
On either side : None

Documents Marked:—
On either side : Nil

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4741.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 60/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/33/2005-आई. आर.(बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4741.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 13-11-2006.

[No. L-12012/33/2005-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, CHENNAI

Tuesday, the 29th August, 2006

PRESENT : K. JAYARAMAN, PRESIDING OFFICER

INDUSTRIAL DISPUTE NO. 60/2005

(In the Matter of the dispute for adjudication under clasue (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Central Bank of India and their workmen)

BETWEEN

Sri. M.V. Rangan : I Party/Petitioner

AND

The Manager, : II Party/Management
Central Bank of India, Trichy

APPEARANCE

For the Petitioner : Sri S. Ayyathurai, Advocate

For the Management : M/s. T.S. Gopalan and Co. Advocates

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-12012/33/2005-IR (B-II) dated 13-07-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:—

"Whether the discharge of Shri M.V. Rangan, FTSK, Trichy main branch from the Bank's service by the Central Bank of India, Trichy is legal and justified? If not, to what relief the workman is entitled?

2. After the receipt of the reference, it was taken on file as ID.No. 60/2005 and notices were issued to both the parties and they have entered appearance through their advocates and filed Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was appointed as a part time FTSK from 14-7-87 under the Respondent/Management at Regional office at Trichy. He was confirmed on 10.3.88. While serving as a full time Safai Karmachari, the Petitioner was asked to collect money from post office and treasury, though this job was not allotted to him as he was educationally not qualified. While so, on 7-11-2002 the Respondent/ Bank issued an order of suspension on the Petitioner, wherein it was alleged that though a sum of Rs.11 ,316/ - was collected from the treasury on 8-6-2002 it was not remitted into the bank till 1-10-2002 and secondly, the Petitioner collected a sum of Rs.1 ,096/ - on 21-9-2002 from the post office and had not remitted the same into the bank. Thus, the charge of misappropriation was framed against the Petitioner. A charge sheet was issued on 21-3-2003 and a farce of enquiry was conducted by the Respondent/Management wherein the union representative appeared voluntarily on the side of the Petitioner and made him to admit the charges. The enquiry was not conducted as per principles of natural justice and the Petitioner was not given any opportunity to defend himself from the charges. By an order dated 17-12-2003 the Disciplinary Authority has discharged the Petitioner for no fault of him. His appeal to the Zonal Manager was also rejected. Since the charges were not proved by proper evidence and the Petitioner was not given sufficient opportunity to defend his case, the action taken by the Respondent is illegal. No witness was examined in the enquiry. The amounts were remitted by the Petitioner on the same day on which it was received from sub-treasury and post office, but the same was not accounted for by the Cashier & Accountant. Hence, for all these reasons the Petitioner prays this Tribunal to order for reinstatement of the Petitioner with continuity of service and full back wages and other attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that the Petitioner no doubt, was employed as FTSK in Trichy main branch. Respondent/ Bank sent its subordinate staff including Safai karmachari for encashment of postal orders, treasury bills etc. On 21-6-2002, the Trichy main branch sent through the Petitioner a treasury bill for Rs. 11,316 to the Sub Treasury Officer, Trichy for encashment and authorised the Petitioner to receive the payment and acknowledge the receipt on behalf of the bank. But, the Petitioner failed to account for the same. It was informed that the Petitioner had collected the amount on 21-6-02 itself. Though the Petitioner collected the amount from Treasury, he had not remitted it to the bank till October, 2002. Similarly on 20-9-2002, a British Postal Order for 15$ was sent through the Petitioner to the Postmaster, HPO, Trichy with a request to pay the amount to the Petitioner. The Petitioner has not paid the amount and on 31-10-2002 the Respondent/Bank addressed a letter to Postmaster enquiring about the British Postal Order sent for collection and the bank was informed that the Petitioner had collected a sum of Rs. 1096/ -. For these misconducts, on 21-2-2003 a charge sheet was issued to the Petitioner for his having defalcated the remittance of the collected amounts from the treasury & Head Post Office, Trichy. But even earlier to this letter, the Petitioner submitted a reply admitting his guilt. He was asked to appear for enquiry and the enquiry was held on 12-3-2003 in which the Petitioner fully participated and he was assisted by one Mr. Shanmugam and in that enquiry also, the Petitioner admitted the charges and pleaded guilty. Therefore, the Enquiry Officer gave his report on 9-4-2003 holding that charges against the Petitioner are proved. Subsequently, a copy of Enquiry Officer's report was forwarded to the Petitioner inviting his comments. By his letter dated 25-4-2003 he once again admitted the charges and pleaded guilty. On 1-12-2003 a 2nd show cause notice was issued proposing the punishment of discharge from service and directing him to appear for personal hearing. After considering his representation on 17-12-2003, the Disciplinary Authority imposed the punishment of discharge from service with superannuation benefits and gratuity. Imposition of punishment is for the acts of misconduct committed by the Petitioner and the said order of discharge is not liable to be interfered with for any of the reasons given by the Petitioner. Since the misconduct committed by the Petitioner is a gross misconduct the punishment imposed on him is proportionate to the charges framed against him. Since the Petitioner has admitted the charges, it is not open to him to challenge the enquiry. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. Again, in its rejoinder, the Petitioner contended that as a full time safai karmachari his duties were to sweep the office, furniture, fixtures and provide drinking water. However, the Petitioner has been compelled to work from 7.00 am to 7.00 pm. The Petitioner contends that the work of going to post office and treasury was occasionally on

the orders of his superiors. While so, on 15-6-2001 the met with accident in which he suffered with head injuries. He was hospitalised and after the incident he developed with headache often and at time he would get giddiness and still he suffers from such problem and would forget what happened. Though, it is alleged that he has admitted the offence the alleged confession was not voluntary. The enquiry was not conducted in a fair and in accordance with the principles of natural justice. The punishment of discharge from service is highly is disproportionate while considering the position held by the Petitioner and the Petitioner has not caused any loss to the bank as the money was returned immediately after it was brought to his notice. The bank has victimized the Petitioner. Hence, he prays that an award may be passed in his favour.

6. In these circumstances, the points for my consideration are—

(i) "Whether the punishment of discharge imposed on the Petitioner by the Respondent/Bank is legal and justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :—

7. Though the Petitioner alleged in the Claim Statement that the enquiry conducted by the domestic authorities was not fair and proper, the Petitioner has not adduced any evidence questioning the conduct of domestic enquiry. Learned counsel for the Petitioner also has not questioned the conduct of enquiry. Further, in this case the Petitioner has admitted the charges framed against him not in one time but thrice he has admitted the guilt namely that he has temporarily misappropriated the bank's money by collecting the amount from the treasury and also from the post office. Therefore, learned counsel for the Petitioner has taken much pain to substantiate that under Section 11A of the I.D. Act, this Court has got discretion to interfere with the imposition of punishment namely discharge from service, which is grossly disproportionate to the charge alleged against him. Further, it is alleged that the Petitioner before that incident has met with an accident on 15-6-2001 in which he had suffered head injury and due to his he was hospitalised for five days and after the incident he developed headache often and at times he would get giddiness and he still suffers and he forget what had happened before that. Only due to this illness, he has not deposited the amount collected from treasury which was entrusted to him and atso the amount collected from post office immediately to the bank. But when it was brought to his notice, he immediately returned the money and made good the loss. Under such circumstances, by this incident, no loss has occurred to the bank and he had put in more than 15 years of unblemished service and no memo was issued to him prior to this incident and under such circumstances, the grave punishment given to him namely discharge from service is grossly disproportionate to the charges framed against him.

8. On the side of the Petitioner, no document was filed and no witness was examined and on the side of the Respondent/Management 21 documents were marked as Ex. M 1 to M21, which are copy of enquiry proceedings and findings of the Enquiry Officer and also the order passed by Appellate Authority. Learned counsel for the Petitioner contended that the Petitioner was only appointed as full time Safai Karmachari and his duties were to sweep office, furniture, fixtures and provide drinking water and it is not his duty to collect the amount from other sources and his duty hours are from 7.00 am to 2.00 pm. But, however, the Petitioner had been compelled to work from 7.00 am to 7.00 pm and at times, the higher officers have given instruction to collect the money and the work of going to post office and treasury, since it is not his duty, he cannot be blamed for the remittance of the amount. Any how, except this incident, no other incident had happened and no memo was issued to the Petitioner for the non-payment of remittance and this has happened only due to the illness of the Petitioner and under such circumstances, imposition of punishment by the Respondent/Bank namely discharge from service is grossly disproportionate to the charge framed against him. Learned counsel for the Petitioner further relied on the rulings reported in 1985 2 SCC 358 SHANKAR DASS Vs. UNION OF INDIA & ANOTHER wherein an employee was retrenched by Ministry of Rehabilitation, Government of India in 1960 whereupon he was employed as a cash clerk by Delhi Milk Supply Scheme Department which is under the administrative control of the Government of India. In 1962, he was prosecuted for breach of trust in respect of a sum of Rs. 500/- and he repaid that amount and pleaded guilty to the charge. Accepting that plea, the Magistrate convicted him under Section 409 of Penal Code but, in view of the peculiar circumstances relating to the crime and the criminal, he released him under Section 4 of Probation of Offenders Act, 1958. As a result of conviction, the Govt. dismissed him from service summarily w.e.f. 14-4-1964. The single Judge of the High Court held that by reason of Section 12 of Probation Offenders Act, the employee could not be dismissed without affording a reasonable opportunity of being heard under Article 311 (2). But the Division Bench allowed the Govt.'s Letters Patent Appeal. When the matter came up before the Supreme Court, it has held that *"penalty of dismissal imposed on the appellant is whimsical and the power under Article 311 (2) second proviso (a) like every other power, has to be exercised fairly, justly and reasonably and the Govt. should apply its mind to the penalty which could appropriately be imposed in so far as service career of the delinquent employee is concerned. However, he may not be entitled to be heard on the question of penalty in view of the clause (a) of the 2nd proviso which makes Article 311(2) inapplicable"* and it is ordered that employee shall be reinstated in service forthwith from the date of dismissal instead of reinstatement. Relying on this decision, learned counsel for the Petitioner contended that though it is alleged that the Petitioner has temporarily misappropriated

the bank's amount, it is only due to his illness which he has suffered by the accident and he has remitted the amount when it was brought to his notice and therefore, there is no intention to misappropriate the bank's amount. Under such circumstances, without considering his unblemished service of 15 years, the Respondent/Bank has imposed the punishment of discharge from service and under such circumstances, this Tribunal has got every power to interfere with the imposition of punishment and modify the same.

9. But, as against this, learned counsel for the Respondent contended that the Petitioner has not alleged that only due to his illness and only due to his forgetfulness he has not paid the amount which was collected by him to the bank. On the other hand, though opportunity was given to him in all the three times, he has admitted the charges framed against him and he has pleaded guilty. Under such circumstances, since the Petitioner has misappropriated the amount and he has paid the amount only after the charge was framed against him, it cannot be said that it is only due to his illness. Further, the Supreme Court and High Courts in very number of cases have held that the amount of misappropriation is not material, but the bank has lost confidence, as the employee has misappropriated the public money. Under such circumstances, the Petitioner who has temporarily misappropriated the amount of the bank and therefore, the bank has lost confidence reposed on him and hence at no stretch of imagination, it can be said that the punishment imposed by the Respondent/ Bank is excessive or disproportionate to the charges framed against him. He further argued that in number of decisions, the Supreme Court has held that sympathy should not be a reason for invoking Section 11A to modify the punishment. Under such circumstances, he argued that punishment imposed on him is commensurate with the charge framed against him which is grave in nature.

10. I find much force in the contention of the learned counsel for the Respondent because the Petitioner has not alleged that only due to his illness, he has not paid the amount into the bank, on the other hand, he has admitted the charge framed against him not in one time, but three times when opportunity was given to him. Under such circumstances, I am not in a position to accept the contention of the Petitioner that the punishment imposed on him is grossly disproportionate to the charge framed against him. Therefore, I find the punishment of discharge from service imposed by the Respondent/Bank against the Petitioner is legal and justified.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled ?

11. In view of my foregoing findings, I find the Petitioner is not entitled to any relief. No Costs.

12. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Petitioner : Nil

For the II PartyManagement: —

Ex. No.	Date	Description
M1	30-11-02	Xerox copy of the memo issued to Petitioner
M2	04-02-03	Xerox copy of the reply given by Petitioner
M3	21-02-03	Xerox copy of the Charge Sheet issued to Petitioner
M4	21-02-03	Xerox copy of the letter from Respondent to Petitioner Informing appointment of Presenting Officer
M5	27-02-03	Xerox copy of the letter from Enquiry Officer to Petitioner
M6	15-03-03	Xerox Copy of the written submission of Presenting Officer
M7	18-03-03	Xerpx copy of the written submission of defence
M8	12-04-03	Xerox copy of the letter from Disciplinary Authority to Petitioner enclosing enquiry findings
M9	25-04-03	Xerox copy of the reply given by Petitioner to Respondent
M10	12-03-03	Xerox copy of the enquiry proceedings
M11	21-09-02	Xerox copy of the letter from Respondent/Bank to Treasury Officer
M12	20-09-02	Xerox copy of the letter from Respondent/Bank to Head Post Office
M13	31-10-02	Xerox copy of the letter from Respondent/Bank to HPO
M14	31-10-02	Xerox copy of the letter from Petitioner to Respondent
M15	11-11-02	Xerox copy of the letter from Respondent/Bank to HPO
M16	12-11-02	Xerox copy of the letter from Respondent to Treasury Officer
M17	21-02-03	Xerox copy of the Charge-sheet
M18	01-12-03	Xerox Copy of the 2nd show cause notice
M19	12-12-03	Xerox copy of the reply to 2nd show cause notice
M20	17-12-03	Xerox copy of the final order
M21	02-06-04	Xerox copy of the order of Appellate Authority

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4742.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 68/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/56/2005-आई आर (बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4742.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (No. Ref. 68/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the management of Dena Bank, and their workman, received by the Central Government on 13-11-2006.

[No. L-12011/56/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 28th August, 2006

PRESENT : K. Jayaraman, Presding Officer

Industrial Dispute No. 68/2005

(In the Matter of the dispute for adjudication under clasue (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Dena Bank and their workmen)

BETWEEN

The General Secreatry, Dena Bank Employees Union : I Party/Claiment

AND

The Deputy Regional Manager, Dena Bank, Chennai : II Party/Management

APPEARANCE

For the Claimant : Sri K. Vasu Venkat, Advocate

For the Management : M/s. M. Rajamanickam & P. Srinivasan, Advocates

AWARD

The Central Government, Ministry of Labour vide order No. L-12011/56/2005-IR (B-II) dated 30-08-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:—

"Whether the action of the management of Dena Bank in awarding the punishment of compulsory retirement with superannuation benefits and without disqualification from future employment to Smt. Madhumathi, Ex-Cashier is legal and justified? If not, to what relief the workman is entitled?"

2. After the receipt of the reference, it was taken on file as I.D. No. 68/2005 and notices were issued to both the parties and they have entered appearance through their advocates and filed their claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner union espouses the cause of concerned employee Smt. Madhumathi, who joined the services of Respondent/Bank on 2-9-80 and she worked as Cashier "E" at Tondiarpet branch at the time of her suspension. In the said branch the cash is kept under double lock system and Smt. Madhumathi was joint custodian along with another officer. While so, on 4-4-2002 a suspension order was issued to her along with show cause notice for the alleged misconduct of shortfall of Rs. 14,500. The concerned employee has given a reply to the show cause notice, but the Respondent/Management issued charge sheet dated 24-4-2002 to the concerned employee alleging that she was working as paying cashier at Tondiarpet branch on 3-4-2002 and it was reported that there was a cash shortfall of Rs. 14,500 in Rs. 500 packets received couated, initialled and held by her. Even though the concerned employee has given explanation, not satisfying with her explanation, the management ordered domestic enquiry and the enquiry was mere an eye wash and principles of natural justice was not adhered therein and the Enquiry Officer has held that Smt. Madhumathi was guilty of the charges levelled against her. Curiously, the Head Office issued a circular dated 6-6-2002 even before proving the charges and when the enquiry was still pending to the effect that action of charge sheeted employee was one of fraud. Even while there was no charge of fraud levelled or proved against her, the Disciplinary Authority held in its memo proposing the punishment of dismissal without notice dated 28-05-2003 that shortage of cash is nothing but a delit rate fraud. It is clear that she was prejudiced by the circular mentioned above. Thus, the management was not acting in a just and fair manner and on 4-7-2003 the Disciplinary Authority proceeded to impose punishment of compulsory retirement with superannuation benefits and without disqualification from future employment. Though the concerned employee preferred an appeal, the Appellate Authority without applying his mind confirmed the order of Disciplinary Authority without any discussion. The Respondent/Bank has singled out Smt. Madhumathi for the alleged shortfall of cash while the cash was kept under doubt lock system. While none of the allegations were proved in the enquiry, the charge sheeted employee has been held to be guilty of the charges. The charge of fraud never levelled against the concerned employee but the punishment was imposed only on the basis of deliberate fraud without granting an opportunity

to defend the said charge. The punishment of compulsory retirement is harsh and disproportionate to the charge levelled against the concerned employee. Hence, for all these reasons, the Petitioner union prays this Tribunal to set aside order of termination and direct the Respondent/ Bank to reinstate the concerned employee into service with back wages and all other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner has given only one side of the picture to this Tribunal conveniently suppressing various facts related to this case. No doubt, the concerned employee joined as Head Cashier 'E' at Tondiarpet branch and she was the joint custodian of cash kept in double lock with another officer in that branch. But it does not absolve of her responsibility and accountability for the correctness of cash and valuable held and running of cash department. Show cause notice was given and she was suspended by an order dated 4-4-2002. Since the Respondent/Bank has not satisfied with the explanation given by the concerned employee, an enquiry was ordered to be conducted against her. Subsequently, the charge sheet was supplemental by corrigendum dated 23-7-2002 with regard to provision of disciplinary procedures. At the time of issue of charge sheet original settlement dated 10-4-2002 was not referred to as it was not circulated then. As the misconduct and the charges levelled against the Petitioner remained unaltered, corrigendum was issued. In the enquiry, the concerned employee was also defended by her union representative and full opportunity was given to her to cross examine the management witnesses and to adduce evidence to defend her case. The Petitioner has fully participated in the enquiry and there was no violation of principles of natural justice. The Respondent has no doubt, issued circular dated 6-6-2002 to exercise caution and be vigilant quoting various modus operandi being adopted in perpetration of frauds at various branches of the bank all over India. But there is no mention of name of branch or role of any employee while narrating the modus operandi. Therefore, it is false to allege that the Disciplinary Authority was predetermined as the circular was issued for reiteration of the circular adhere to the instructions contained in the manual of instructions. The Disciplinary Authority and Enquiry Officer after careful consideration of entire matter including points raised by the Petitioner during the enquiry given the verdict that charges of fraud was proved against the concerned employee. Only after that she was imposed with the punishment of compulsory retirement with superannuation benefits and without disqualification from future employment. The Appellate Authority after careful consideration of the entire evidence has disposed of the appeal. In the enquiry, the Petitioner has admitted that all other packets of various denominations has been duly pinned and initialled by her except the ten packets of Rs. 500/- where the shortages was detected. It only proves that the act of her not to initial the said packet was deliberate and intentional. Therefore, the order passed by the Disciplinary Authority and Appellate Authority are in order and justified in every respects. Hence, for all these reasons, the Respondent prays that he claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

(i) "Whether the action of the Respondent/ Management in awarding the punishment of compulsory retirement with superannuation benefits and without disqualification from future employment on Smt. Madhumathi is legal and justified?

(ii) To what relief the concerned employee is entitled?"

Point No. 1:

6. The charge framed in this case against the concerned employee Smt. Madhumathi is that while she was working as paying cashier category 'E' at Tondiarpet branch on 3-4-2002, it was reported that there was a cash shortfall of Rs. 14,500/- in the packets of Rs. 500/- received, counted, initialled and held by her and the cash shortage was observed by the statutory auditors during the cash verification on 3-4-2002. The shortage was Rs.1500/- each in 9 packets (i.e. 3 notes of Rs. 500 each) and Rs.1000/- in the 10th packet (2 notes of Rs. 500) and she was charge sheeted for the said charge. On the side of the Petitioner, 11 documents were marked and on the side of the Respondent 15 documents were marked. Both sides have not examined any evidence before this Tribunal Ex.W3 is the copy of charge sheet dated 24-4-2002 . Ex. W5 is the copy of circular issued by Head Office on 6-6-2002. Ex.W8 is the copy of memo terminating the services of concerned employee. On the side of the Respondent Ex. M6 and M7 are copy of enquiry proceedings and findings of Enquiry Officer. Ex. M1 is the copy of Bipartite Settlement with regard to duties of head cashier.

7. Learned counsel for the Petitioner contended that no doubt, the concerned employee Smt. Madhumathi worked as Cashier 'E' in Tondiarpet Branch of Respondent/ Bank. In that branch, the cash is kept under double lock system and Smt. Madhumathi was a joint custodian along with another officer. In such circumstances, for the shortage of money, she alone cannot be said to be responsible for the cash shortage in the branch. On the other hand, she was alone charge sheeted for the shortage of money on the allegation that she is responsible for the short fall. But, even in the domestic enquiry MW1 namely Mr. A. R. Natarajan, Branch Manager of Tondiarpet branch during the cross examination has admitted that when he was confronted whether all the ten packets of Rs. 500/ where there was shortage were labelled at the time of verification by statutory auditors, he answered all the packets were pinned and labelled except one packet without label and further when he was cross examined whether all the packets were affixed with date seal stamp at the time of verification by statutory auditors, for which he has answered that there was no seal in those packets. Further, when he was

confronted that all the said packets were contained any initial at the time of verification of statutory auditors, he replied that there was no initial at the time of verification and subsequently, the charge sheeted employee was asked to put her initial and when the management witness was cross examined with regard to rule and practice of checking cash, he stated that as per rule the officer is required to check the entire cash. In such circumstances, it is not clear how the Enquiry Officer has come to the conclusion that the shortage of amount in cash chest was due to the misconduct of the concerned employee because, it is admitted by the Branch Manager himself that the entire cash is to be checked by the officer and further, during the statutory audit of inspection in the bundle of Rs. 500 there was no initial of the concerned employee. Under such circumstances, it cannot be said that the concerned employee, who is the joint custodian, alone is responsible for the shortage of money in the cash chest.

8. But, as against this, learned counsel for the Respondent contended relying on the provisions of Bipartite Settlement with regard to duties of cashier, wherein it is stated that duties of cashier are holding the bank's cash, keys and/or other valuables in safe custody jointly with an officer and being accountable for them and being responsible for the running of the cash department. Since the concerned employee namely Smt. Madhumathy was working as Head Cashier E in Tondiarpet branch during that period, she is responsible for safe custody of the cash in the bank. Though she was a joint custodian, as a cashier she is responsible and accountable for the amount in the cash chest. In this case, during statutory auditors inspection there was a short fall of Rs. 14,500 and therefore, she was responsible for the shortage of money.

9. But, though I find some force in the contention of the learned counsel for the Respondent, I find there is no meaning, if I accept the same, because when it is clearly stated that the concerned employee is the joint custodian of the safe chest, it cannot be said that she alone is responsible for the shortage of money in the cash deposited in the bank.

10. Then again, learned counsel for the Petitioner argued that no charge of fraud was framed against the Petitioner, but the finding of the Disciplinary Authority is that shortage of cash is nothing but deliberate fraud by removing currency notes from 10 packets of Rs. 500 denomination (3 pieces each from 9 packets and 2 pieces from 1 packet i.e. 29 x 500 =Rs. 14,500), which shows the prejudicial mind of the Disciplinary Authority and this prejudice has caused only due to the memo/circular issued by the Head Office when the enquiry was pending before the domestic authorities. He further contended that under Ex. W5 which is a copy of circular issued by the Head Office dated 6-6-2002, the Head Office has given a memo stating that frauds perpetrated at various branches different modus operandi adopted, wherein it is stated as 4th item that "a statutory auditor while checking cash at one of the branches found cash shortage of Rs. 14,500 in a ring of Rs. 500 denomination notes and they observed three notes short in each of the nine bundles and two notes short in one bundle of Rs. 500 denomination notes and they also observed that all the bundles in the said ring were stitched but not initialled by the cashier. However, all other bundles were stitched and duly initialled by the cashier. The cash was being checked by the officers of branch at regular interval. It has been further reported that the cashier was in financially straitened circumstances and applied for enhancement of existing OD limit by Rs. 15,000. It is suspected that to tide over the time lag till the enhancement in OD limit is sanctioned, this cash shortage was planned." Learned counsel for the Petitioner argued that even though the name of the concerned employee was not mentioned in that memo, the incident has clearly stated and it was alleged that it was a fraud committed against the bank which influenced the mind of the Disciplinary Authority, who had come to the conclusion that the misconduct is a fraud committed by the concerned employee when there is no charge of fraud has been made against the concerned employee in the charge sheet.

11. But, as against this, learned counsel for the Respondent contended that by this circular, the Head Office has instructed their subordinate offices to exercise caution and be vigilant quoting the various modus operandi adopted in perpetration of frauds at various branches of the bank allover India. But, it is not mentioned any particular branch name or particular name of employee while narrating the modus operandi that can be construed as predetermination of the guilt of the employee. Therefore, it is nothing but an imagination on the part of the Petitioner to say that it is pre-determined or influenced the mind of the Disciplinary Authority.

12. But, though I find some force in the contention of the Respondent, on scrutinizing the evidence and also arguments of the learned counsel on either side, I find definitely this circular has prejudiced the mind of the Disciplinary Authority because in that circular, it is clearly stated that fraud has been committed by an employee, who is in charge of cash and therefore, when the matter was pending before the domestic authorities, the Head Office & Disciplinary Authority have come to the conclusion that the cashier had committed fraud against the bank which can be clearly stated that authorities have predetermined the incident and had come to the conclusion that the concerned employee alone is responsible for the short fall of the amount in the bank. Further, when we peruse the findings of the Enquiry Officer, wherein he has observed that "during the cross examination, the departmental representative raised a question whether all the packets were labelled affixed with date seal, stamp and contained any initial on the 10 packets of Rs. 500 where there was shortage at the time of verification by statutory auditors, MW1 has deposed that all the packets were pinned and labelled except one packet and there were no seal in those packets and there were no initials in those packets at the time of verification and subsequently, the charge sheeted

employee was asked to put the initials, The same observation is also mentioned in DEXI. The above act of putting initials on the packets by charge sheeted employee after the detection of shortage proves that she owns the responsibility of shortage." I find this observation of the Enquiry Officer exposes his prejudicial mind for coming to the conclusion that concerned employee alone is responsible for the shortage of amount, when the statutory auditors have seen that there is no initial in the bundles in which shortage of amount has been found, they have asked the concerned employee to initial the same before the officer. I do not find for what reason the statutory auditors have asked the concerned employee to sign in that bundle after verification, After getting the initials in the bundles, the Enquiry Officer has stated only admitting her guilt, the concerned employee has made her initial in the bundles which I think, is a perverse finding given by the Enquiry Officer. It is well settled that the findings of the Enquiry Officer must be supported by legal evidence and if after scrutiny of the report of the Enquiry Officer, the Tribunal comes to the conclusion that the findings are based on irrelevant and extraneous matters, the enquiry will be liable to be set aside. It is also well settled that perversity vitiates the disciplinary proceedings and further, there is a two fold test of perversity of a finding and the first test is that the findings is not supported by any legal evidence at all and the second is that on the basis of material on record, no reasonable man could have arrived at the findings complained of. Though it is not every factual inaccuracy, however slight or insignificant that would justify the quashing of the report and the Industrial Tribunal would not be justified in characterizing the finding recorded in the domestic enquiry as perverse, unless it can be shown that such finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced before it. In this case, I find the finding is not supported by any legal evidence, since the Enquiry Officer and Disciplinary Authority have already come to the conclusion that shortage of amount in the Respondent/Bank was only due to the concerned employee's action and a fraud has been committed by the concerned employee and therefore, they have come to a perverse view stating that concerned employee after owns her responsibility made initial in the bundle before the statutory auditors at the time of verification. Since in this case, the findings and facts are based on no legal evidence and the conclusion is one to which no reasonable man could come, I find, it is a case of perversity.

13. But, as against this, learned counsel for the Respondent contended that even though it is within the province of Industrial Tribunal to go into the adequacy of the penalty, the Apex Court in recent cases have repeatedly held that even in the case of defalcation, imposing penalty of compulsory retirement is justified. In a ruling reported in 2006 4 SCC 348 A. SUDHAKR *Vs.* POSTMASTER GENERAL, HYDERABAD AND ANOTHER the Supreme Court has held that *"the fact of temporary defalcation of any amount itself is sufficient for the Disciplinary Authority to impose the punishment of compulsory retirement upon the appellant."* He also relied on the rulings reported in 2006 I SCC 430 HAMBI GOWDA EDUCATIONAL TRUST VS. STATE OF KARNATAKA wherein the Supreme Court has held that *"while exercising such discretionary jurisdiction, no doubt, it is open to the Tribunal to substitute one punishment by another, but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia it is found to be grossly disproportionate."* Relying on these decisions, learned counsel for the Respondent argued that it is well settled that an employee/officer of the bank is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Even acting beyond one's authority is a misconduct. In this case, charge against the concerned employee is not casual in nature and it is very serious and that being so, plea about absence of loss is also without any substance. Further, in this case, the concerned employee was found guilty of misappropriation of funds of the bank and therefore, the Respondent/Bank lost confidence and under such circumstances, it cannot be said that punishment imposed by the Disciplinary Authority is disproportionate to the charge levelled against the concerned employee. Under such circumstances, the punishment of compulsory retirement imposed by the employer would not be interfered with by this Tribunal on the ground of sympathy or generosity and it should be dealt with firmly. Further, in this case, since the concerned employee as a Cashier 'E' of the branch, she is responsible & accountable for all the money as a joint custodian and it cannot be said that she is not responsible for the shortage of money. Under such circumstances, since the Respondent/Bank has lost confidence and since she is accountable for the amount of shortage, the findings of the Enquiry Officer and punishment imposed by the Disciplinary Authority are justifiable and it cannot be said that it is perverse.

14. But, as I have already stated the findings of the Enquiry Officer is perverse due to the reason that they have prejudiced by the circular issued by Head Office. Under such circumstances, I find the action of the Respondent/Bank in awarding the punishment of compulsory retirement to Smt. Madhumathi is not legal and justified.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

15. In view of my foregoing findings that the imposition of punishment on the concerned employee by the Respondent/Bank is not legal and justified, I find the Petitioner is entitled to the relief as prayed for. As such, I direct the Respondent/ Bank to reinstate the concerned

employee Smt. Madhumathi into services of the bank with back wages, continuity of service and all other attendant benefits. No Costs.

16. Thus, the reference is answered accordingly.

(Dictated to the PA.. transcribed and typed by him corrected and pronounced by me in the open court on this day the 28th August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

On either side : None

Documents Marked :—

For the I Party/Petitioner :—

Ex.No.	Date	Description
W 1	04-04-02	Xerox copy of the show cause notice cum suspension order issued to concerned employee.
W 2	11-04-02	Xerox copy of the explanation given by concerned employee.
W 3	24-04-02	Xerox copy of the Charge Sheet issued to Smt. Madhumathi.
W 4	25-05-02	Xerox copy of the explanation to Charge Sheet.
W 5	06-06-02	Xerox copy of the circular issued by Respondent/ Bank.
W 6	28-10-02	Xerox copy of the submission of Petitioner to Respondent.
W 7	28-05-03	Xerox copy of the memo issued by Respondent/Bank.
W 8	04-07-03	Xerox copy of the memo of Respondent terminating Smt. Madhumathi.
W 9	02-08-03	Xerox copy of the appeal preferred by concerned employee.
W 10	14-05-04	Xerox copy of the order of Appellate Authority.
W 11	30-08-05	Xerox copy of the reference.

For the II Party/Management:

M 1	Nil	Xerox copy of the Bipartite Settlement.
M 2	13-06-02	Xerox copy of the enquiry proceedings.
M 3	19-06-02	Xerox copy of the enquiry proceedings.
M 4	27-02-02	Xerox copy of the enquiry proceedings.
M 5	03-09-02	Xerox copy of the enquiry proceedings.
M 6	05-09-02	Xerox copy of the enquiry proceedings.
M 7	21-10-02	Xerox copy of the enquiry findings.
M 8	28-10-02	Xerox copy of the reply for enquiry findings to Disciplinary Authority.
M 9	12-06-03	Xerox copy of the proceedings of personal hearing.
M 10	01-04-01	Xerox copy of the muster roll of Tondiarpet branch.
M 11	12-12-01	Xerox copy of the cash key register of Respondent.
M 12	02-04-02	Xerox copy of the single lock cash registered of Tondiarpet branch.
M 13	25-03-02	Xerox copy of the double lock cash register Tondiarpet branch.
M 14	02-04-02	Xerox copy of the statement of account of H. O.
M 15	03-04-02	Xerox copy of the request letter of Mrs. K. Madhumathi.

नई दिल्ली, 14 नवम्बर, 2006

का.आ 4743.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बलाय लाल मुखर्जी एवं कं. लि., के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या आई डी. 53/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-34011/4/2003-आई आर (बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4743.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of M/s. Balailal Mookerjee & Co. (P) Ltd., and their workmen, received by the Central Government on 13-11-2006.

[No. L-34011/4/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HYDERABAD

PRESENT:

SHRI T. RAMACHANDRA REDDY : Presiding Officer

dated the 31st day of October, 2006

Industrial Dispute No. 53/2004

BETWEEN

The General Secretary,
Visakhapatnam Harbour &
Port Workers' Union,
D. No. 26-26-27,
Harbour Approach Road,
Visakhapatnam-530 001. .....Petitioner

AND

1. The Branch Manager,
M/s. Balailal Mookerjee & Co. (P) Ltd.,
D. No. 22-31-71,
Mookerjee House,
Beach Road,
Visakhapatnam-530 001.

2. The Managing Director,
M/s. Balailal Mookerjee & Co. (p) Ltd.,
Wardley House, 25, Swallow Lane,
Kolkata-700 001 (W.B.) .....Respondent

APPEARANCES

For the Petitioner : M/s. V.V. Ravi Prasad, J.V. Rama Krishna, Advocates

For the Respondent : Nil

AWARD

This is a reference made by the Government of India, Ministry of Labour by its Order No. L-34011/4/2003-IR(B.II) dated 12-2-2004 in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 with the following schedule :—

SCHEDULE

"Whether the demand of the Visakhapatnam Harbour & Port Workers' Union for not extending the benefits like-(1) increment @ Rs. 300 per month, (2) Dearness Allowance as per the CPI prevailing in the state and (3) Medical allowance @ Rs. 100 per month w.e.f. 1-4-2000 by the Management of M/s. Balailal Mookerjee & Co. (P) Ltd., is legal and justified? If not, to what relief the concerned union is entitled?"

2. Notices were issued to both the parties. Vakalat for the Petitioner Union was filed by M/s. V.V. Ravi Prasad and others. Respondent was present on 30-6-2004 and obtained time for filing the vakalat. Again he has taken time for filing vakalat. But, he did not choose to file the same and absented.

3. The Petitioner union represented by the General Secretary filed claim statement stating that Respondent Management engaged in steamer agency, stevedoring, charter brokering and C & F agency, having its registered office at Kolkata and a branch office at Visakhapatnam. It is further submitted that cause of claimant Nos. 2 to 5 as described in the claim statement is being espoused by claimant No. 1 registered trade union. The 2nd claimant in the claim statement Sri V. Gurundha Gupta initially joined the Management as a typist on 22-3-1974 and later designated as an executive and presently drawing a basic of Rs. 3100. The third claimant, Sri B. Appa Rao joined as a sub-staff on 16-4-1964 and presently drawing pay of Rs. 2250 and 4th claimant, Sri K. Perraju joined as a sub-staff on 16-8-1967 and presently drawing Rs. 2235 and 5th claimant Sri Gummadi Rama Rao joined as sub-staff on 6-3-1974 and presently drawing pay of Rs. 2235. The above claimants are drawing the said basic pay with DA and HRA admissible to them w.e.f. 1-4-1999. It is further submitted that the Respondent Management is bound to pay its employees scales equivalent to Central Government pay scales and it has been adopted and implemented in the year 1965. It is further submitted that the DA has to be given as per the consumer price index and the Management revised pays from 1-4-1999 and thereafter the employees were not given increments ro enhanced DA or HRA and other allowances inspite of making several representations. The Labour Enforcement Officer (Central) after inspection, directed the Management to give annual increments regularly. On a complaint given to the Assistant Labour Commissioner (C), Visakhapatnam conciliation proceedings were taken up and the same were closed on 27-3-2003 due to failure. As such, the matter was referred to the Government. The Petitioner union requested to pass an award as prayed for.

4. The Respondent appeared on 30-6-2004 and 19-8-2004 and requested for time for engaging an Advocte but did not choose to file a counter nor appeared subsequently. The Petitioner union filed claim statement on 2-2-2005 and the Respondent was absent and it was adjourned for Petitioner's evidence posting to 7-4-2005. Subsequently the Respondents were present on 25-8-2005 and received copies of claim statement and the documents and requested time to engage an Advocate and to file counter and documents. Again Respondent was absent on 23-12-2005, 24-2-2006, 26-4-2006, 28-6-2006, 30-8-2006 and 12-10-2006. The Petitioner union filed evidence affidavit of WW 1 in support of the claim and the Respondent who has absented himself was set ex-parte and arguments of the Petitioner heard.

5. The affidavit of Sri B. Ch. Masen, General Secretary of the Petitioner Union discloses that the Visakhapatnam Harbour and Port Workers's Union is a

registered trade union and taken up the cause of the workers working at Visakhapatnam. The claim Petitioners from 2 to 5 described in the claim statement are the employees of the Respondent Management and drawing their revised salaries w.e.f. 1-4-1999 and the Respondent Management has not paid the revised scale equivalent to the central government pay scales which was adopted by the Management way back in the year 1965. As such it was complained to the Labour Enforcement Officer (Central) who held the conciliation proceedings and referred to the Government of India, on its failure.

6. in view of the evidence of the WW 1 in the matter, not being contested by the Respondent, the demand of the Visakhapatnam Harbour and Port Worker's Union is legal and justified. As such the award is passed directing the Respondent to extend the benefits like, (1) Increment @ Rs. 300 per month, (2) Dearness allowance as per the CPI prevailing in the state and (3) Medical allowance @ Rs. 100 per month w.e.f. 1-4-2000. The award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 31st day of October, 2006.

T. RAMACHANDRA REDDY, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner :

Witnesses examined for the Respondent :

WW 1 : Sri B. Ch. Masen : Nil

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 14 नवम्बर, 2006

का.आ 4744.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और इनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अर्नाकुलम के पंचाट (संदर्भ संख्या 20/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-35011/2/2003-आई. आर.(बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4744.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the industrial Dispute between the management of Cochin Port Trust, and their workmen, received by the Central Government on 13-11-2006.

[No. L-35011/2/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present :
Shri P.L. Norbert, B.A., L.L.B. : Presiding Officer

(Friday the 27th day of October, 2006/5th Karthika, 1928)

Industrial Dispute No. 20/2006

I.D. 38 OF 2003 of Labour Court, Ernakulam

workman/Union	:	The General Secretary Cochin Port Employees Sangh Kochi-9. Adv. Shri S. Manu
Management	:	The Chairman Cochin Port Trust Kochi-3.

AWARD

This is a reference made by the Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is :—

> "Whether the Promotion given by the management of Cochin Port Trust to Shri Edwin D. Mellow, Asstt. Foreman of Mechanical Engineering Deptt. as Foreman is fair, proper and justified?"

2. The reference was made at the instance of the union espousing the case of workman Shri Edwin D. Mellow who was Assistant Foreman of Mechanical Engineering Department of Cochin Port Trust. Pending industrial dispute the workman died. The question referred for adjudication is whether the promotion given to the workman, Shri Edwin D. Mellow is proper or not. Since the workman is no more and since no consequential reliefs are prayed for, the claim has become infructuous and an adjudication of the dispute is inconsequential.

3. In the result, an award is passed finding that since the workman is no more and since the promotion alone is questioned and no consequential reliefs are prayed for, the dispute does not exist and the action of the management in giving promotion to the worker is proper and justified. No cost. The award will take effect one month after its publication in the official Gazette.

Dictated to the Personal Assistant transcribed by her and corrected by me on this the 27th day of October, 2006.

P.L. NORBERT, Presiding Officer

APPENDIX : Nil.

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4745.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाईटेड इंडिया इंश्यूरेन्स कं. लि., के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या आई डी. 64/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-17012/26/2001-आई. आर.(बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4745.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2001) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi as shown in the Annexure in the industrial Dispute between the management of M/s. United India Insurance Co. Ltd., and their workman, which was received by the Central Government on 13-11-2006.

[No. L-17012/26/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present :
Presiding Officer : R.N. RAI.

I.D. No. 64/2001

In the matter of :

Shri O.P. Parihar,
R/o. D-429, Madipur,
J.J. colony,
New Delhi-110 063.

Versus

The Manager,
United India Insurance Co. Ltd.,
M/s. United India Insurance Co. Ltd.,
8th Floor, Kanchanjunga Building,
18, Barakhamba Road,
New Delhi-110 001.

AWARD

The Ministry of Labour by its letter No. L-17012/26/2001 (IR (B-II) Central Government, DT. 10-10-2001 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the action of the management of M/s. United India Insurance Co. Ltd., in removing the services of Shri O.P. Parihar, Sub-Staff in Punjabi Bagh Branch *vide* removal order dated 14-02-1995 is just and legal? If not, what relief the said workman is entitled to and from what date ?"

The workman applicant has filed claim statement. In his claim statement he has stated that he was in the employment of the above management for the last several years and on the date of giving him false and fictitious charge sheet he was posted at the Branch Office, Punjabi Bagh, New Delhi. The said charge sheet was given to him on 14-6-1994.

That without given him any opportunity to reply the charge sheet a drama of an eye-wash inquiry was staged in which the workman was not given any apportunity to cross examine the management's witnesses and to adduce his evidence in order to prove that the charges leveled against him are false and fictitious.

That the workman was not given the inquiry report, not allowed to submit his appeal and his officers obtained signature on various papers assuring him that nothing would happen against him and the workman signed those papers in good faith.

That after a period of several years when he was not taken back on duty he sent a demand notice to the management on 12-10-2000 for his reinstatement in service with continuity of service and full back wages but that too was not considered by the management and therefore the claim before the conciliation for his reinstatement in service with continuity of service and full back wages was filed and on the failure of the conciliation proceedings the present reference.

It is, therefore, most respectfully prayed that in view of the aforementioned submissions the management may be directed to reinstate the workman in service with continuity of service and full back wages alongwith all the consequential benefits.

The management has filed Written Statement. In the Written Statement it has been stated that there is no industrial dispute between Mr. Parihar and the Company as Mr. Parihar is no longer an employee of the company. He was removed from the service of the company *vide* an office order dated 14-2-1995 after conducting an inquiry against him under Rules, 25(4) and Rule 25(5) of the General Insurance (CDA) Rules 1975 and his removal has become final as he has preferred not to file an appeal against the order of removal to the competent authority inspite of extension of time at his request to file the reply. Even during the extended period he has not filed the appeal and thus he has accepted the order of removal and the order of removal

has become final. The copy of order of removal from service filed herewith.

That an inquiry under the rules was conducted. Shri S.S. Gupta was appointed the Inquiry Officer. He fixed 21-11-1994 and 8-12-1994. Om prakash Parihar was informed of the date by service of notice but he intentionally did not appear and therefore, he was proceeding ex-parte and charges were found to be proved by the Inquiry Officer. The copy of the inquiry report was sent to him who was absent from duty. One copy was sent at his residence and one copy was displayed at the notice board at the office of the company. Inspite of service no reply was sent by him. The competent authority after examining the record and report imposed the penalty of "Removal from service which shall not be a disqualification from further employment". Thereafter he did not approach the company for a very long time and one fine morning a request was received from him through a letter dated 8-5-1995 requesting for supply of documents for filing reply. The copy of the letter dated 8-5-1995 is enclosed herewith. The copies of the documents asked for were sent to the ex-employee through a registered letter dated 23-5-1995 which was received by him on 3-6-1995 and one set was personally accepted by him on 1-6-1995 under his own signatures. Those documents like service book etc. which cannot be supplied were allowed to inspect. He *vide* a letter dated nil which was received in the office of the company on 13-6-1995 he admitted the receipt of the documents but requested that the time for filing the appeal may please be reckoned from 4-6-1995. The copy of the said letter is filed herewith. Though the period of appeal has already expired but the same was extended up to 31-7-1995 to enable him to file the appeal. But no appeal was filed and *vide* a letter dated 1-8-1995 he requested for extension of the time till 1-8-1995 but even then the appeal was not filed and thus the orders of removal from service became final. The copy of the letter dated 1-8-1995 is enclosed. Thus it is clear that there is no subsisting industrial dispute between the parties and the present reference has become infractuous.

That Shri Om Prakash Parihar was removed from service *vide* a letter dated 14-2-1995 and petition of reconciliation was filed in October, 2000 though the same was not maintainable as due to non-filing of the appeal, the order has become final, even then no reasonable explanation was given and thus the petition is malafide.

That even otherwise the company has lost its faith in the ex-employee. The conduct of the ex-employee has never been satisfactory from 2-7-1970 when he joined the company and till 14-2-1995 when he was removed from the service. He has been irregular from the very beginning. He remained on authorized leave from 36 days in November and December, 1986. His conduct in the office was not satisfactory and reports of misbehaviour were received. He was reportedly in the habit of taking drugs and used to shut himself in the bathroom in the office for hours and there were allegations of stealing glasses, electric lights, brass accessories from the door and on one occasion he was accused of stealing diamond ring of Mrs. Data. It was also alleged that he has stolen money from the pockets of labourers who were employed by the company for manual work they used to keep their clothes while working. A lunch box and packet of sweets was reportedly stolen by him from the car of Mr. M.G. Sharma, Branch Manager, Branch Office Rewari when Mr. Parihar was asked keep stationery items in the car to be taken to Rewari and while keeping these goods, the theft is alleged. Shri K.V. Vadhyanathan, Asstt. Manager, Stationery Cell sent a office note dated 28-1-1988 regarding the misconducts, misbehaviour and irregularities of Mr. Parihar and on the basis of those reports he was transferred to Regional Office, Kailash Building from stationer cell after permission from the Head Office. He remained on unauthorized leave during 1987 and 1988 many a times and ultimately he was transferred to Punjabi Bagh Branch Office on 24-7-1989. His annual increment was not being released since 1985 due his frequent unauthorized absence. Mr. Parihar absented himself from service since 20-8-1991 when he was called upon by the Branch Manager *vide* his letter dated 11-9-1991 to join last straw came when on 16-8-1993 when the Cashier of the Branch Mr. O. P. Datania handed over a pay slip of Rs. 6992 along with case of Rs. 6992 to Mr. Parihar to be deposited in the bank. But Mr. Parihar deposited only a sum of Rs. 6592/- by over writing the deposit slip and thus retained Rs.400/- with him by depositing short. He left the deposit slip of Rs. 6592/- on the table of the cashier in lunch break and left the office on that very day and did not come to the office till today.

That the disciplinary proceedings were stated against Mr. Parihar for unauthorized absence of 526 and half day *vide* memorandum dated 14-6-1994 which was duly served on 15-6-1994. No reply was filed by Mr. Parihar and therefore an inquiry was ordered in which Shri S.S. Gupta, Assistant Manager was appointed an Inquiry Officer which ultimately resulted in the removal from service. The copy of the office order of removal is filed herewith.

In view of the above explained circumstances the company has lost its confidence in Mr. Parihar and it feels that his reinstatement for which there is no ground at all will not be in the interest of the company.

It is further submitted that para no.1 as stated is admitted to the extent that Mr. Parihar was posted at Punjabi Bagh Branch and charge sheet was served on 14-6-1994. Rest of the paras are wrong and denied. It is also denied that the charge sheet was false and fictitious.

That para no. 2 of the statement of claim as stated is absolutely wrong and denied. It is denied that no opportunity was given to cross examine the witnesses or the inquiry was an eye-wash.

That para no.3 of the statement of claim is wrong and denied. All the documents have been handed over twice as admitted by Mr. Parihar himself. One set has been handed over personally on 1-6-1995 and one set has been received

by him by post on 3-6-1995 and the same has been admitted by him vide his letter dated 4-6-1995 when he requested for extension of time.

That para no.4 of the statement of claim is wrong and denied. Since he stood already removed from service there was no question of his reinstatement as well as payment of wages. The prayer clause of the statement of claim is wrong and denied. It is therefore prayed that the petition may please be dismissed with costs.

It transpires from perusal of the order sheet that the workman Shri O.P. Parihar was present on 11-1-2004 and time was given to him for filing rejoinder. He has not filed rejoinder despite several dates. Last opportunity was given to him on 1-1-2006. He has not filed rejoinder and affidavit till date. On 2-11-2006 opportunity for filing rejoinder and affidavit was closed.

The workman has challenged his removal order dated 14-2-1995. He has not filed any affidavit in support of his claim despite several dates given since 16-7-2002. The workman has failed to prove his claim statement. He is not entitled to get any relief.

The reference is replied thus :—

The action of the management of M/s. United India Insurance Co. Ltd., in removing the services of Shri O.P. Parihar, Sub-Staff in Punjabi Bagh Branch vide removal order dated 14-2-1995 is just and legal. The workman applicant is not entitled to get any relief as prayed for.

Award is given accordingly.

Date : 06-11-2006. R.N. RAI, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का.आ. 4746.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. -2, चंडीगढ़ के पंचाट (संदर्भ संख्या 237/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/35/2005-आई आर (बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4746.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 237/2005) of the Central Government Industrial Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda, and their workman, received by the Central Government on 13-11-2006.

[No. L-12011/35/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT II, CHANDIGARH

Presiding Officer : SHRI KULDIP SINGH

CASE No. I.D. No. 237/2005

Registered on 9-9-2005

Date of decision 21-9-2006

Sr vice president, Bank of Baroda employees's union-18, Ashok Nagar, Ludhiana

.....Petitioner

Versus

The Regional Manager, Bank of Baroda, Regional Office, Bank of Baroda Building, Sector-17-B, Chandigarh

.....Respondent

APPEARANCE

For the Workman : NEMO

For the Management : Mr. B.B. BAGGA & V.K.. DIWAN Advocate.

AWARD

The workman continues to be absent. Nobody is present for the Management.

It is on record that despite a direction from the appropriate govt. the workman did not appear before the Tribunal all this period right from September 2005. Notices were sent to him and he appeared on 1st February, but thereafter he has not appeared. On 18th July, 2006 Shri Tek Chand Sharma, Advocate caused his presence for him but without authority. Even he is not present today. During all this period of more than one year neither the workman has filed the Claim Petition nor has appeared. This shows that he has no interest in this case that is why he has not seriously prosecuted his case.

The appropriate govt. vide their reference No. L-12011/35/2005-IR(B-II) dated 13th July, 2005, desired to know whether the action of the Management in reducing the pay of the workman and withdrawal of special allowance by him was illegal and unjustified and if so, to what relief the workman is entitled to get. On record I find no evidence, much less in the Claim Petition of the workman, stating as to how the action of the Management, if at all it was taken, was illegal and unjustified. For this reason the award is passed against the workman holding that he has failed to prove that the Management has taken such action and the action was illegal and unjustified . The workman is, therefore, not entitled to any relief. Let a copy of this award be sent to the appropriate govt. for necessary action and the life be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का. आ. 4747.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 241/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/34/2005-आई आर (बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4747.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 241/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda, and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-12011/34/2005-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 241/2005

Registered on 9-9-2005

Date of Decision : 21-9-2006

Sr. Vice President, Bank of Baroda Employees' Union, 18, Ashok Nagar, Ludhiana. ...Petitioner

Versus

The Regional Manager, Bank of Baroda, Regional Office, Bank of Baroda Building, Sector-17-B, Chandigarh. . . Respondent

APPEARANCE :

For the Workman : Nemo

For the Management : Mr. B. B. Bagga and V. K. Diwan, Advocates.

AWARD

The workman continues to be absent. Nobody is present for the Management.

It is on record that despite a direction from the appropriate govt. the workman did not appear before the Tribunal all this period right from September 2005. Notices were sent to him and he appeared on 1st February, but thereafter he has not appeared. On 18th July, 2006 Shri Tek Chand Sharma, Advocate caused his presence for him but without authority. Even he is not present today. During all this period of more than one year neither the workman has filed the Claim Petition nor has appeared. This shows that he has not interest in this case that is why he has not seriously prosecuted his case.

The appropriate govt. vide their reference No. L-12011/34/2005-IR(B-II) dated 13 July, 2005, desired to know whether the action of the Management in reducing the pay of the workman and withdrawal of special allowance by him was illegal and unjustified and if so, to what relief the workman is entitled to get. On record I find no evidence, much less in the Claim Petition of the workman, stating as to how the action of the Management, if at all it was taken, was illegal and unjustified. For this reason the award is passed against the workman holding that he has failed to prove that the Management has taken such action and the action was illegal and unjustified. The workman is, therefore, not entitled to any relief. Let a copy of this award be sent to the appropriate govt. for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का. आ. 4748.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1011/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/52/2000-आई आर (बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4748.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1011/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-12011/52/2000-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I. D. No. 1011/2005

Registered on 17-9-2005

Date of Decision : 19-9-2006

The General Secretary, UCO Bank Employees' Union (Regd.), Central Office, UCO Bank, G. T. Road, Jalandhar City. ... Petitioner

Versus

The Zonal Manager, UCO Bank, Zonal Office, SCO 1092-93, Sector-22-B, Chandigarh. ... Respondent.

APPEARANCE:

For the Workman : Nemo

For the Management : Mr. N. K. Zakhmi, Advocate

AWARD

The workman are not present in person nor through their representatives. The record of the file shows that they did not appear on any date fixed. One Surinder Kumar appeared for the workers on 10th April, 2006, but without Authority. It was in his presence the case was next listed for 17th July, 2006, but on that day also neither he appeared nor any of the workmen appeared. The Management continuously appeared through Counsel. Even today the workmen are not present and Management appears through Counsel.

On record, I find the statement of Claim filed by the workers and their rejoinder. Management has filed the Written Statement and the affidavit of their witness. Barring this there is no evidence produced by the parties for and against their claim. The workmen have not filed the affidavits of their witnesses in support of their Claim.

The Govt. of India vide their reference No. L-12011/52/2000-IR(B-II) dated 11 September, 2000, desired to know whether the denial of over time wages to workers for their having performed duties on 12th April, 1995, which was declared a holiday under the Negotiable Instruments Act by the Govt. of India, was just and legal and if not to what relief the workmen are entitled to. On record I do not find any evidence to show that the workmen had performed their duties on 12th April, 1995 and that day was declared as a Public Holiday, under the negotiable Instrument Act; and that the said action of the Management was unjust and illegal. There is absolutely no evidence to support the claim of the workmen, therefore, they are not entitled to any relief. The reference is answered against them. The award is passed in these terms. Let a copy of this award be sent to the appropriate govt. for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का. आ. 4749.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-I, नई दिल्ली के पंचाट (संदर्भ संख्या 7/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/185/2004-आई आर (बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4749.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. I, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank, and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-12012/185/2004-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI SANT SINGH BAL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NO. 1, NEW DELHI

I. D. No. 7/2005

In the matter of dispute between :

Fateh Ram Son of Shri Devi Sahai,
R/o Vill. and P. O. Nanglijat,
Tehsil Hathin, Distt. Faridabad,
Faridabad. ... Workman

Versus

The General Manager,
Syndicate Bank,
Sarojini House 6,
Bhagwan Dass Rd.,
New Delhi. ... Management

APPEARANCE:

Workman in person.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/185/2004/IR(B-II) dated 2-2-2005

has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Syndicate Bank in terminating the services of Shri Fateh Ram Son of Shri Devi Sahai (Temporary Attender) w.e.f. 3-8-2002 is just and legal ? If not to what relief the workman is entitled to ?"

2. Reference was received for adjudicatron. The workman filed statement of claim claiming that he was working as Attender with respondent Bank and worked continuously till 3-8-2002. He was paid wages @ Rs. 40 to 50 per day. He worked sincerely and faithfully for 240 days in a year but his services were terminated by the bank on 4-8-2002 without any notice and paying compensation in violation of provisions of I. D. Act. Management has regularized the services of other Attenders who did not complete 240 days and thus he has been treated with discrimination. He claims reinstatement and regularization in services with consequential benefits.

3. The claim has been contested by the management by filing written statement raising preliminary objections that the reference has been made mechanically and is bad in law. Claimant was never appointed by competent authority in accordance with the rules and procedure of appointment. His services were purely casual in nature and he was not concerned with the business, normal duties and functioning and thus he is not workman of the respondent bank. He is not entitled to regularization of his services.

4. On merits it is denied that the claimant worked as Attender w.e.f. 3-7-2000 upto 3-8-2002. He was daily wager for which he was paid equally agreed amount for the number of days he worked. He was required to work as per exigencies/requirement of the work for specific period and was paid charges on daily basis. There was no employer employee relationship between the parties. He was not issued any appointment letter. His engagement was purely temporary and his services were liable to be discontinued at any point of time and he has not been retrenched as claimed. His termination cannot be treated as retrenchment in view of the provisions of I. D. Act. It is denied that the management absorbed other Attenders and treated the workman with discrimination. The claim is sought to be dismissed.

5. Today the workman appeared and filed an application for passing a No Dispute Award. The application is accompanied by affidavit Ex. W-1. Workman also made statement on oath that in view of the offer made by the bank vide order No. 936/FRD/PD/TR/06 dated 30-10-2006 for consideration of his candidature for appointment at Attender, he is not interested to contest the reference and his disputes with the respondent bank be treated as settled and No Dispute Award be passed.

6. In view of his above statement recorded on oath No Dispute Award is accordingly passed. File be consigned to record room.

Further it is ordered that the requisite number of copies of this Award may be forwarded to the Central Govt. for necessary action at their end.

Dated : 2-11-06

SANT SINGH BAL, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का. आ. 4750.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 106/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/100/2005-आई आर (बी-II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4750.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Bank and their workmen, which was received by the Central Government on 13-11-2006.

[No. L-12012/100/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 5th September, 2006

PRESENT :

K. Jayaraman, Presiding Officer

Industrial Dispute No. 106/2005

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workmen]

BETWEEN :

Sri P. Jayaram : I Party/Petitioner

AND

The Deputy General Manager, Indian Bank, Tirunelveli. : II Party/Management

APPEARANCE :

For the Petitioner : Mr. K. J. Arunachalam, Authorized Representative

For the Management : M/s. T. S. Gopalan and Co., Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/100/2005-IR(B-II) dated 30-9-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :

"Whether the punishment of compulsory retirement from service awarded to Shri P. Jayaram, Sub-staff of Indian Bank, Kovilangulam, Virudhunagar District by the management of Indian Bank, Tirunelveli is legal and justified ? If not, to what relief the workman is entitled to ?"

2. After the receipt of the reference, it was taken on file as I. D. No. 106/2005 and notices were issued to both the parties and the I Party/Petitioner entered appearance through his authorised representative and the II Party/ Management entered appearance through their Advocates and both sides filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner joined the Respondent/Bank as a sub-staff in the year 1991. At the time of punishment was imposed on him in the year 2004, he was holding the post of Daftry. Thus, he had put in all about 14 years of service in the Respondent/Bank. On 3-8-2002 the Respondent/Bank placed the Petitioner under suspension for the alleged grievous nature of the acts that he has availed loan from Palayampatti Primary Agricultural Co-operative Bank during January, 2001 with a fraudulent and manipulated salary particulars-cum-undertaking dated 10-1-2001. Even prior to the issue of suspension order, the Disciplinary Authority served show cause notice on the Petitioner dated 30-5-2002 regarding yet another allegation of TA/LFC bill dated 30-10-01 and he was served charge sheet with regard to both these allegations on 27-9-2002. Even before termination, the Respondent/Bank has appointed one Mr. Thirunavukkarasu as investigation officer to investigate into the alleged acts. The said investigation officer has obtained only a xerox copy of salary certificate-cum-undertaking letter without any further details thereon. In the enquiry, the Respondent/Management has failed to establish the fraud of so called conversation reported to have transpired between investigating official and the Secretary to PACB in respect of salary certificate-cum-undertaking letter and they have not produced the original of the alleged certificate which was used as evidence to fix up the Petitioner. Further, the investigation report which is marked as MEX 1 is dated 12-8-02 much later to the order of suspension by the Disciplinary Authority. In the enquiry, the Petitioner has given acceptance letter to the Disciplinary Authority under Clause 19.2(e) of Bipartite Settlement and the Enquiry Officer has adjourned the enquiry on the ground that enquiry will be decided on the decision of Disciplinary Authority. But, the same Enquiry Officer commenced the enquiry once again on 25-2-03. The enquiry was conducted on that day in the absence of Petitioner and in that Respondent/Bank has marked 15 documents and examined the investigation officer namely Mr. Thirunavukkarasu as their witness. In the absence of Petitioner, the enquiry was conducted ex parte with a direction to Presenting Officer to submit his written brief. But, again the Respondent/ Bank re-opened the enquiry and allowed cross examination of management witness namely Arputharaj MW1. Further, the Respondent/Bank has also given statement that they are going to examine four witnesses but for the reasons best known to him they have not examined the said persons as witnesses. In the enquiry, neither the investigating officer nor Respondent/Bank has obtained any opinion from the handwriting expert regarding the document MEX 2. Further, the Respondent/Bank has not produced certain documents which were asked by the Petitioner. There are many lapses in the conduct of enquiry which go to vitiate the enquiry proceedings held against the Petitioner. Further, for the convenience of Enquiry Officer and Presenting Officer they have split the two charges into 7 and it is unfortunate that orders dated 19-1-2004 of the Assistant General Manager also made it appear that there were seven charges against the Petitioner. In the enquiry, the charges are considered to have established the lack of integrity and honesty on the part of the Petitioner. The Disciplinary Authority without going into submission made by the Petitioner has imposed the punishment of compulsory retirement. Even in the appeal preferred against the said order, the Appellate Authority has rejected the appeal on the ground that honesty and integrity are the prime factors considered essential for a job in financial institutions like the bank. The order of the Appellate Authority was passed beyond the mandatory period of disposal of appeal given under Bipartite Settlement. The imposition of punishment in this case is without any legal evidence in support of the charges levelled against the Petitioner by the Respondent/Bank. Further, the punishment imposed

in respect of two charges without spelling out the quantum of punishment in respect of each and every charges. There was no direct evidence except what the Petitioner has stated in his letter to vigilance officer under certain compelling circumstances. Therefore, the findings of the Enquiry Officer are perverse and the enquiry suffers from various infirmities. In any case, the punishment imposed on the Petitioner is harsh and disproportionate as the entire proceedings held against him stand vitiated on account of non-observance of principles of natural justice and various other shortcomings and lapses in the conduct of enquiry. The punishment imposed on the Petitioner is without any proof or proper evidence. Further, there was no material information which enable the Disciplinary Authority to frame charges. List of documents was given only at the enquiry and not prior to commencement of enquiry. The documents marked before enquiry were not marked through makers of documents. Only Xerox copies of documents were marked before enquiry. The punishment imposed is not for the charge under 5(j) but for lack of integrity and honesty.

4. As against this, the Respondent in its Counter Statement contended that the issue referred for adjudication is only about the propriety of the punishment and therefore, it is not permissible for the Petitioner to convass any other question nor challenge the domestic enquiry. In the Respondent/Bank for the award staff the facility of leave travel concession is given by which any workman who avails leave and goes on holiday is entitled to get reimbursement of travel expenses for himself and his dependent members of the family as declared by him. In the year 1997, the Petitioner was proceeded with disciplinary action for making a false claim of TA/LFC bill for which he was given punishment of stoppage of one increment without cumulative effect on 8-7-97. Again on 30-10-2001, the Petitioner submitted a claim of travelling allowance under leave travel concession for a sum of Rs. 4,100 incurred by him during his travel from 15-10-01 to 17-10-01. In that leave travel, he was accompanied by his wife, two daughters, one son, father, mother and his brother and he has also declared that they were all members of the family and wholly dependent on him. On that basis, claim was settled. But as there was some doubt about the genuineness of claim, the matter was investigated by one Mr. Thirunavukkarasu. The investigation officer has verified the documents and he found the trip sheet was prepared to support the false bill. Further, he found the Petitioner's father was a retired telephone department employee and his brother was working in telephone department. Subsequently, the show cause notice was issued to him making reference to the above false claim. On 23-7-2002 Kovilangulam branch of the Respondent/Bank received a letter dated 19-7-2002 from Palayampatti Primary Agricultural Cooperative Bank informing that the Petitioner had taken a loan of Rs. 20,000 on 17-1-2001 and in spite of several reminders, he has not repaid the loan. They requested the Respondent/Bank to recover the amount from his salary. When the Branch Manager asked the Co-operative Bank, it was found that the salary certificate was fabricated one and the signature of the Manager was forged and when the investigation officer questioned the Petitioner, the Petitioner admitted that he had fabricated the certificate and forged the signature of the Branch Manager and he has taken the rubber stamp from the drawer of the Branch Manager and he has given the letter dated 1-9-2002 admitting his guilt. Clause 12(e) of the Bipartite Settlement dated 10-4-2002 provides that an enquiry need not be held if—(a) the bank has issued show cause notice to the employee advising him of misconduct and the punishment for which he may be liable for such misconduct (b) the employee makes a voluntary admission of his guilt in reply to the aforesaid show cause notice and (c) the misconduct is such that even if proved, the bank does not intend to award the punishment of discharge or dismissal, However, it is not open to the employee to whom a show cause notice has been issued charging him with misconduct to make a voluntary admission of the guilt that punishing authority could award him punishment other than discharge of dismissal. In other words, notwithstanding the voluntary admission of guilt made by the chargesheeted employee, it is still open to the Disciplinary Authority to impose appropriate punishment in the facts and circumstances of the case. In this case, on 30-5-2002 show cause notice was issued to the Petitioner and on 3-8-2002 the Petitioner was placed under suspension pending investigation. On 27-9-02 a chargesheet was issued to the Petitioner covering both transactions. On 29-10-02 the Petitioner gave a reply admitting the charges. The Petitioner admitted his misconduct in the enquiry in the fond hope that he will be considered for punishment other than dismissal. When he was informed with regard to the position, the Petitioner withdrew his admission and enquiry was conducted. The Petitioner participated in the enquiry. On 17-7-2003 the Enquiry Officer has given his report holding that charges against the Petitioner was proved. After following the formalities, the Petitioner appeared for the personal hearing on 18-10-2003 and admitted the charges and pleaded for leniency and the Disciplinary Authority after considering his submission passed the final order imposing the punishment of compulsory retirement. The said imposition of punishment is fully justified and valid in law and the same should not be interfered with for all or any of the reasons urged by the Petitioner. There was nothing wrong in the investigation report being given after the Petitioner was placed under suspension. With regard to enquiry dated 25-2-2003 the Petitioner was informed about the enquiry dated even on 14-2-2003 and he received the letter on 19-2-2003 but in spite of being aware of enquiry, the Petitioner did not appear for enquiry. Therefore, it was

conducted in his absence. It is not an invariable rule that every witness cited by a party should be examined in the enquiry. The Petitioner has not disputed the documents under MEX2. The enquiry was conducted conforming to the principles of natural justice. The two transactions in which the Petitioner involved had to be classified into seven charges and all the charges were found proved. The provision for disposing of appeal within three months was only a directory and not mandatory. The reference with regard to punishment awarded to another sub-staff is not relevant as the facts are entirely different. Hence, the Respondent prays to dismiss the claim of the Petitioner with costs.

5. Again, in the rejoinder the Petitioner alleged that it is false to contend that the only issue in this case is about propriety of punishment. The issue that has been referred to for adjudication is as to whether the punishment of compulsory retirement from service awarded to the Petitioner is legal and justified. In very number of cases, the Supreme Court and High Courts have held that wherever the punishment is awarded pursuant to holding of enquiry, the Industrial Tribunal/Labour Court must take up the issue relating to fairness of enquiry as a preliminary issue and only arriving at a finding, the Tribunal can enter into the other issues. In this case, the Respondent/Bank has not conducted a fair and proper enquiry, as the witness to prove the charges was not examined in the said enquiry. Further, the findings of the Enquiry Officer holding the Petitioner guilty of charges is baseless, perverse and bad in law. Witness who was examined in this case has not spoken anything about the charges levelled against the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

6. In these circumstances, the points for my consideration are :—

(i) "Whether the punishment of compulsory retirement from service imposed on the Petitioner by the Respondent/Management is legal and justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

7. It is an admitted case of the parties that while the Petitioner was working as a Daftry in Kovilangulam branch of the Respondent/Bank, he was issued with chargesheet stating that he has prepared a fraudulent and manipulated salary particulars-cum-undertaking letter dated 10-1-2001 in a pre-printed format of Palayampatti Primary Agricultural Co-operative Bank, in which he has inscribed the signature as Branch Manager of Kovilangulam branch. Further, he has submitted TA/LFC bill on 30-10-2001 claiming reimbursement of Rs. 4,100 from the bank with falsified and fabricated documents and thus obtained reimbursement from the bank. Further, he has declared his father and brother who have independent source of income, as dependants and claimed a false claim for the LFC reimbursement. For which, a domestic enquiry was held and in which the Disciplinary Authority has imposed the punishment of compulsory retirement. The Petitioner questioned the imposition of punishment and also the findings given by the Enquiry Officer as perverse and grossly disproportionate to the charges alleged against him. It is further contended that though the charges were framed under clause 5(j) of Bipartite Settlement, charges were considered to have established by the Disciplinary Authority with regard to lack of integrity and honesty on the part of the Petitioner and therefore, para 5(j) ceases to have any relevance on the account of the fact that there was no evidence to that effect to the charges. He has also questioned the conduct of enquiry. On the side of the Petitioner as many as 9 documents were marked as Exs. W1 to W9 and on the Respondent side 39 documents were marked with regard to enquiry proceedings which are marked as Exs. M1 to M39.

8. At the first instance, learned counsel for the Respondent contended that the issued referred by the Govt. in this case is whether the punishment of compulsory retirement awarded to the Petitioner is legal and justified. Therefore, the issue is only about propriety of the punishment and therefore, it is not permissible for the Petitioner to canvass any other question nor challenge the domestic enquiry.

9. On the other hand, representative for the Petitioner contended that though it is true that the issue that was referred to adjudication is whether punishment of compulsory retirement awarded to the Petitioner is legal and justified, awarding of punishment is after holding of an enquiry and the fairness of which is at large before this Tribunal. Even the Supreme Court and High Courts have held in several decisions, wherever the punishment is awarded pursuant to holding of an enquiry, the Industrial Tribunal/Labour Court must take up the issue relating to fairness of the said enquiry as a preliminary issue and only arriving at a finding on the said issue, the Tribunal can enter into the other issues. Since this is a well settled proposition of law, it cannot be said that the Petitioner cannot canvass other issues and this Tribunal has no jurisdiction to go into the validity of domestic enquiry. In this case, the Petitioner contended that enquiry was not conducted properly as the witnesses were not examined to prove the charges. Under such circumstances, it is not fair on the part of the Respondent to say that Petitioner is not permitted to canvass other questions nor challenged the findings of enquiry.

10. I find much force in the contention of the representative. Since the Petitioner has challenged the entire domestic enquiry itself on the ground that it was not conducted in a just and proper way, I find this Tribunal can enter into the question whether the conduct of domestic enquiry is just and proper.

11. The representative for the Petitioner contended that there was no material information which enabled the Disciplinary Authority to frame allegations and in the charge sheet it was not stated from which records they have come to the conclusion that the Petitioner has committed misconduct. Further, though the Respondent/ Management has marked so many documents and these documents were given only at the time of enquiry and nor prior to the commencement of enquiry as stated in the Bipartite Settlement. Further, though they have given a list of witnesses to the examined on the side of the Respondent, the Respondent/Management has not examined all the witnesses mentioned in the list of witnesses and they have not stated any reason for not examining the witnesses. Though the Respondent/Management has examined the investigating officer as a witness and marked the documents on their side, all those documents were not marked through makers of documents. When the Petitioner has questioned the competency of the document and when he has denied the charge, the Respondent/Management must have obtained the expert opinion namely handwriting expert. Under such circumstances, the findings given by the Enquiry Officer is perverse and the Enquiry Officer has not considered the representation given by the concerned employee. Furthermore, all the documents marked before the domestic enquiry were only. Xerox copies of documents and not originals and they have not given any reason for not producing the originals and they have not mentioned the quantum of punishment in each and every charge alleged to have been proved in the 2nd show cause notice. Above all, the punishment imposed is not for the charge under 5(j) but for lack of integrity and honesty, which was not a charge against the Petitioner. For all these reasons, the representative contended that the enquiry against the Petitioner is not fair and proper.

12. Though the representative for the Petitioner strenuously argued with regard to these points, it is well settled that Industrial Adjudicator while considering the findings of the domestic enquiry must bear in mind that the persons appointed to hold such inquiries are not lawyers and such inquiries are of a simple nature, where technical rules as to evidence and procedure do not prevail. Since the strict rules of Evidence Act or procedural law do not apply to domestic enquiry, minor discrepancies would not render such inquiries as invalid. In this case, though the representative contended that the Enquiry Officer must have sent the documents for expert opinion, it cannot be said that in each and every case where the employee is disputed his signature, must send the documents for expert opinion. Further, the opinion of the expert is not an absolute one. Therefore, in this case, it cannot be a valid ground for setting aside the enquiry on the ground that the enquiry was not conducted in a fair and proper manner. Further, on behalf of the Petitioner it was not shown what prejudice was caused to the Petitioner by not following the procedures alleged by him and I find these are minor discrepancies not affected the enquiry and therefore, I am not inclined to accept the contention of the representative for the Petitioner that domestic enquiry was not conducted in a just and proper manner.

13. The next point insisted by the representative for the Petitioner is the findings of the Enquiry Officer is perverse and the findings is without any legal evidence. No doubt, the perversity vitiates the disciplinary proceedings but, there is a two fold test of perversity of a findings and the first test is that the findings is not supported by any legal evidence at all and the second is that on the basis of material on record, no reasonable man could have arrived at the findings complained of. In other words, the Industrial Tribunal would not be justified in characterizing the finding recorded in the domestic enquiry as perverse, unless it can be shown that such finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced before it. In this case, it is to be seen whether the Petitioner has established this fact with any satisfactory evidence. A finding cannot be described to be perverse merely because it is possible to take a different view on the evidence, nor can a finding be called perverse, because in certain matters, the line of reasoning adopted by the Enquiry Officer is not very cogent or logical. In this case, though the Petitioner alleged that while considering with regard to the claim of loan application, the Enquiry Officer has placed much reliance on the so called confession letter given to the investigation officer, but when the charge has been denied by the Petitioner, the Respondent/Management must establish this fact with independent evidence to prove that the alleged confession letter was given by the Petitioner voluntarily. Further, they have not considered the fact when this letter of admission was made to the investigating officer and they have not considered the circumstances in which the Petitioner has executed this letter of confession. Only under these circumstances, the Petitioner insisted that this document must be sent to handwriting expert opinion.

14. But, on the other hand, learned counsel for the Respondent contended that the Petitioner has not disputed the execution of document and further, he has not challenged that this document was obtained by fraud or coercion or undue influence. Under such circumstances, it cannot be said that the conclusion arrived at by the Enquiry Officer with regard to this document is perverse.

15. Then again, the representative for the Petitioner contended that though charges were framed for two allegations, the Enquiry Officer has split into the same as seven and he has answered for seven charges, as if that seven charges have been framed against the Petitioner and they have considered the lack of integrity and honesty on the part of the Petitioner has been established and imposed the punishment of compulsory retirement, but he

has not stated anything for what reason he has split the two allegations into seven charges. Here again, I find there is no point in the contention of the representative for the Petitioner because by splitting the two charges in what way the Petitioner was prejudiced has not been explained by the Petitioner. Under such circumstances, I cannot come to a conclusion by this that the findings of Enquiry Officer is a perverse one.

16. Then again, the representative for the Petitioner contended that though the Respondent/Bank alleged that the Petitioner has claimed falsely with regard to LFC, the investigation officer has not looked into the various aspects namely number of brothers the Petitioner has got, who have accompanied the Petitioner in LFC tour, which of the brother who worked in telephone department and whether the father of the Petitioner is a pensioner or not and even assuming that he is a pensioner what is the quantum of pension he received and though the Petitioner has produced number of documents before the enquiry, though the Petitioner has established that he has got more than one brother and one of his brothers employed in Virudhunagar telephone department, whereas the other one is not employed anywhere else, these findings were not considered by the Enquiry Officer when he arrived at the findings. Under such circumstances, the finding of the Enquiry Officer is perverse and based on no legal evidence.

17. But, here again, I am not inclined to accept the contention of the representative for the Petitioner because the investigating officer has given a clear evidence that the brother who accompanied the Petitioner is employed in telephone department and it is his further evidence that the father of the Petitioner is a pensioner and not a dependent of the Petitioner. Under such circumstances, the burden of proving the fact that his brother who alleged to be a dependent on the Petitioner is without any job and he is really a dependent on him and the burden of proving that his father is also a dependent on him is upon the Petitioner. But, I find there is no substantial evidence to establish these facts on the side of the Petitioner. Under such circumstances, I cannot come to a conclusion that the finding of the Enquiry Officer is perverse by these allegations.

18. In this case, since the Petitioner has participated in the enquiry fully and he has not raised any objection at the time of marking of documents, I find there is no substance in the contention of the Petitioner that only Xerox copy of the documents alone were marked. Further, with regard to examination of witnesses is concerned, it cannot be said as invariable rule that every witness cited by the Respondent should be examined before the domestic enquiry and it is open to the Respondent/Management to establish their case. When once the Petitioner has admitted before the investigating officer with regard to fabricated salary certificate, it is more or less admission of guilt by the Petitioner which was established before the domestic enquiry through the evidence of investigating officer Mr. Thirunavukkarasu. Therefore, under no stretch of imagination, it can be said that the findings of the Enquiry Officer are perverse and without any legal evidence. As such, I find that the punishment of compulsory retirement from service awarded to the Petitioner by the Respondent/ Bank is legal and justified.

19. Though the representative for the Petitioner contended that imposition of punishment of compulsory retirement is excessive and grossly disproportionate to the charge levelled against him, I find there is no substance in the contention and it is not established before this Tribunal as to how the imposition of punishment of compulsory retirement is grossly disproportionate to the charges levelled against the Petitioner. In this case, since the Respondent alleged that honesty and integrity are prime factors considered as essential for job in Respondent/ Bank which deals with public money and since the Respondent has lost confidence on the Petitioner with regard to his claim in LFC, they have come to the conclusion that he has committed a gross misconduct and imposed the punishment of compulsory retirement. Under such circumstances, I find the punishment imposed by the Respondent/Management is legal and justified and hence, this Tribunal cannot be interfered with the said punishment.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings, I find the Petitioner is not entitled to any relief. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 5th September, 2006).

K. JAYARAMAN, Presiding Officer

Witness Examined :

On either side : None

Documents Marked :

For the I Party/Petitioner :

Ex. No.	Date	Description
W1	30-06-03	Xerox copy of the defence summing up on Enquiry proceedings held against the Petitioner.
W2	13-08-03	Xerox copy of the comments on the Enquiry Officer's Findings submitted by defence representative
W3	10-10-03	Xerox copy of the 2nd show cause notice issued to Petitioner

W4	28-10-03	Xerox copy of the reply given by Petitioner to 2nd show cause notice
W5	19-01-04	Xerox copy of the order of punishment imposed by Disciplinary Authority
W6	21-02-04	Xerox copy of the appeal preferred by Petitioner
W7	16-07-04	Xerox copy of the order of Appellate Authority
W8	24-04-05	Xerox copy of the dispute raised by Petitioner before Assistant Commissioner of Labour (Central)
W9	25-06-04	Xerox copy of the letter submitted by Petitioner before Appellate Authority during personal hearing

For the II Party/Management :

Ex. No.	Date	Description
M1	30-10-01	Xerox copy of the Petitioner's claim for TA for 15-10-01 to 17-10-01
M2	14-10-01	Xerox copy of the trip sheet
M3	15-10-01	Xerox copy of the trip sheet
M4	29-10-01	Xerox copy of the fire charge bill for Rs. 4100
M5	13-12-01	Xerox copy of the reply given by Petitioner to Regional Manager
M6	19-12-01	Xerox copy of the letter from Thangadurai to Enquiry Officer
M7	20-12-01	Xerox copy of the investigation officer's report
M8	07-03-02	Xerox copy of the show cause notice issued to Petitioner
M9	29-03-02	Xerox copy of the note of department to Circle Head
M10	30-05-02	Xerox copy of the show cause notice issued to Petitioner
M11	10-01-01	Xerox copy of the certificate pay disbursing officer
M12	Jan. 01	Xerox copy of the pay slip of Petitioner for Jan. 01
M13	19-08-02	Xerox copy of the letter from Secretary Palayampatti Primary Agri. Co-op. Bank to Respondent/Bank
M14	24-07-02	Xerox copy of the letter from Secretary Palayampatti Primary Agri. Co-op. Bank to Respondent/Bank
M15	01-08-02	Xerox copy of the Petitioner acceptance which was witnessed by another staff
M16	01-08-02	Xerox copy of the letter from Branch Manager to Circle Head
M17	03-08-02	Xerox copy of the show cause notice issued to Petitioner by AGM
M18	08-08-02	Xerox copy of the letter given by Petitioner
M19	12-08-02	Xerox copy of the report of Vigilance Officer
M20	27-09-02	Xerox copy of the chargesheet issued by AGM Circle Head
M21	27-09-02	Xerox copy of the office note to Circle Head
M22	08-08-97	Xerox copy of the order of punishment given by Disciplinary Authority
M23	29 10-02	Xerox copy of the explanation given by Petitioner admitting Charges
M24	08-11-02	Xerox copy of the findings of Enquiry Officer
M25	29-10-02	Xerox copy of the enquiry proceedings
M26	Nil	Xerox copy of the letter from Petitioner to AGM and Disciplinary Authority
M27	25-02-03	Xerox copy of the enquiry proceedings
M28	17-05-03	Xerox copy of the affidavit of Mr. Thankadurai
M29	Nil	Xerox copy of the ration card of Hari Gopalakrishnan
M30	Nil	Xerox copy of the ration card of Petitioner
M31	Nil	Xerox copy of the identity card of Hari Gopalakrishnan
M32	Nil	Xerox copy of the driving licence of Hari Gopalakrishnan
M33	03-01-02	Xerox copy of the voucher
M34	03-01-02	Xerox copy of the voucher
M35	30-05-03	Xerox copy of the Presenting Officer's submissions
M36	17-07-03	Xerox copy of the findings of Enquiry Officer

M37	18-10-03	Xerox copy of the Disciplinary Authority's personal hearing
M38	21-02-04	Xerox copy of the appeal preferred by Petitioner
M39	25-06-04	Xerox copy of the proceedings of Appellate Authority

नई दिल्ली, 14 नवम्बर, 2006

का. आ. 4751.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 235/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/33/2005-आई आर (बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4751.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 235/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workman, which was received by the Central Government on 13-11-2006.

[No. L-12011/33/2005-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case No. I. D. No. 235/2005

Registered on 9-9-2005

Date of Decision : 21-9-2006

Sr. Vice President, Bank of Baroda Employees' Union, 18, Ashok Nagar, Ludhiana. ...Petitioner

Versus

The Regional Manager, Bank of Baroda, Regional Office, Bank of Baroda Building, Sector-17-B, Chandigarh. ...Respondent

APPEARANCE:

For the Workman : Nemo

For the Management : Mr. B. B. Bagga and V. K. Diwan, Advocates

AWARD

The workman continues to be absent. Nobody is present for the Management.

It is on record that despite a direction from the appropriate govt. the workman did not appear before the Tribunal all this period right from September 2005. Notices were sent to him and he appeared on 1st February, but thereafter he has not appeared. On 18th July, 2006 Shri Tek Chand Sharma, Advocate caused his presence for him but without authority. Even he is not present today. During all this period of more than one year neither the workman has filed the Claim Petition nor has appeared. This shows that he has no interest in this case that is why he has not seriously prosecuted his case.

The appropriate govt. vide their reference No. L-12011/33/2005-IR(B-II) dated 13th July, 2005, desired to know whether the action of the Management in reducing the pay of the workman and withdrawal of special allowance by him was illegal and unjustified and if so, to what relief the workman is entitled to get. On record I find no evidence, much less in the Claim Petition of the workman, stating as to how the action of the Management, if at all it was taken, was illegal and unjustified. For this reason the award is passed against the workman holding that he has failed to prove that the Management has taken such action and the action was illegal and unjustified. The workman is, therefore, not entitled to any relief. Let a copy of this award be sent to the appropriate govt. for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2006

का. आ. 4752.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास पोर्ट स्पाईलेज हेन्डलिंग वर्कर्स एसोसिएशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 101/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/67/2005-आई आर (बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 14th November, 2006

S.O. 4752.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the Management of Madras Port Spillage Handling Workers' Association and their

workmen, which was received by the Central Government on 13-11-2006.

[No. L-12011/67/2005-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 7th September, 2006

PRESENT:

K. Jayaraman, Presiding Officer

Industrial Dispute No. 101/2005

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Madras Port Spillage Handling Workers' Association and their workmen].

BETWEEN

Sri V. Jeyaraman .....I Party/Petitioner

AND

The General Secretary,
Madras Port,
Spillage Handling Workers' Association
Chennai .....II Party/Management

APPEARANCE:

For the Petitioner : M/s. R. Rengaramanujam, Advocates.

For the Management : M/s. R.P. Pannerselvam, Advocates.

AWARD

The Central Government, Ministry of Labour vide Order No. L-12011/67/2005-IR(B-II) dated 31-8-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :

"Whether the action of the management of the Madras Port Spillage Handling Workers' Association in terminating the services of Shri V. Jeyaraman w.e.f. 1-4-2001 is justified or not ? If not, what relief he is entitled to ?"

2. After the receipt of the reference, it was taken on file as I.D. No. 101/2005 and notices were issued to both the parties and they have entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

For the mechanical ore handling plant of Chennai Port Trust Workers were engaged on contract basis for clearing the ore spillages. Subsequently, the workers have formed themselves an association namely Madras Port Spillage Handling Workers Association and it was registered under Societies Act. After the formation of association, they have held discussion with the management and a Memorandum of Understanding was entered into between the association and the management. The Memorandum of Understanding was signed on 2-5-1995 and as per the Memorandum of Understanding workers employed by the said association were allowed regular pay scales and as per the Memorandum of Understanding the Respondent Association was registered under Contract Labour (Regulation & Abolition) Act as a contractor and the Chennai Port Trust as a principal employer. Similarly, as per Memorandum of Understanding the vacancies of the said Respondent Association in respect of the workers and staff respectively will be filled up only with the prior approval of the Chairman, Chennai Port Trust. As per clause 11 of Memorandum of Understanding after having obtained approval from Chennai Port Trust, the Petitioner was originally appointed as a full time clerk in Respondent Association on 1-1-97 and he was allowed to regular pay scale and other usual benefits such as annual increment, bonous etc. Anyhow, the Chennai Port Trust exercised the complete control and supervision of staff employed by the Respondent Association. As a principal employer, Chennai Port Trust alone is responsible for liability if any of the employees employed by Respondent Association was not discharged and the Port Trust cannot shirk its responsibility over the service conditions of the employees employed by Respondent Association. Thus, the Petitioner has completed five years of uninterrupted regular service without any blemish and his services were appreciated by his superiors. While so, to his shock and surprise the newly elected President and General Secretary of the Respondent Association who belong to rival union denied the Petitioner's employment and they have not permitted the Petitioner to continue his service as a clerk in Respondent Assoication from 1-4-2001. No charge memo or enquiry was conducted before his oral termination. No opportunity was given to him as per clause 26(d) of Standing Orders governing the 2nd Respondent before issuing oral termination. In his place, another person was appointed as a clerk by the Respondent whimsically in a most arbitrary manner to fulfil their personal interest and gain in gross violation of rules and procedures stipulated under I.D. Act. Even though the Petitioner has made several appeals to the Chennai Port Trust both in person and by representation, Port Trust had not taken any action against the Respondent Association. Therefore, the Petitioner filed a Writ Petition No. 6653/2004 & WPMP No. 7892/2004 before High Court of Madras and the High Court was pleased to pass an order dated 30-3-2004 directing the Chennai Port Trust and 2nd Respondent to dispose of the representation of the Petitioner within a period of eight weeks. Only after that the Chennai Port Trust passed an

order stating that claim of the Petitioner is only with the Respondent Association and not with Chennai Port Trust and the Respondent Association has not even obeyed the said orders of High Court and therefore, the Petitioner raised the dispute before labour authorities. After its failure, the matter was referred to this Tribunal for adjudication. The Chennai Port Trust and the Respondent Association jointly committed irregularities with regard to service conditions ensured under memorandum of Understanding the bye laws. standing orders and rules and regulations. Hence, the action of the Respondent is arbitrary and illegal. The termination was made by the Respondent without any notice and without assigning any reason and therefore, it is illegal and liable to be set aside. No notice or notice pay was paid to the Petitioner before the oral termination which is in gross violation of Section 25F of I.D. Act, hence, it is illegal. The Chennai Port Trust also failed to consider the case of the Petitioner in the capacity as principal employer which is against the memorandum of Understanding and bye laws. Hence, for all these reasons, the Petitioner prays to set aside the order of oral termination by the Respondent from 1-4-2001 as null and void and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service with back wages and other consequential benefits.

4. As against this, the Respondent in its Counter Statement contended that the Respondent admits the averments made by the Petitioner with regard to formation and registration of Respondent Association in the year 1990. The Respondent Association is a contractor and the members of association are engaged in ore spillage cleaning work in the mechanised ore handling plant within the precinct of Chennai Port Trust as per Memorandum of Understanding arrived at between the association and port trust management. The Memorandum of Understanding has been amended and duly registered by newly elected Executive Committee on 31-12-98. The Respondent Association has also obtained licence from Regional Labour Commissioner (Central) under Contract Labour (Regulation & Abolition) Act. As per Memorandum of Understanding vacancies of the association in respect of workers and staff respectively will be filled up with the prior approval of Chairman, Chennai Port Trust. While so, the Petitioner without informing to any authority quits his clerical job from this association before 27-3-2001. He has also not appeared before the Registrar at the time of constitution of new executive committee on 27-3-2001. When the factors are like that all of a sudden, after three years, the Respondent Association received a letter from the Petitioner dated 21-1-2004 seeking settlement of wages, EPF contribution etc. and for this, the Respondent has given a elaborate reply to the Petitioner on 8-2-2004. If really, the Petitioner was having intention to continue his employment in this Respondent Association, he should approach the principal employer or informing to this association with relevant records as a clerk of this Respondent Association. Above all, the Petitioner despatched a letter dated 21-1-2004 to the Respondent Association for his wage and EPF settlement after a lapse of three years, it clearly reveals that he himself wilfully left the clerical job from this association without informing the appropriate authority. It is false to allege that he met the members of association on 1-4-2001. This Respondent is in no way connected with the denial of employment or oral termination and the Respondent never violated the provisions of I.D. Act. The previous Executive Committee of the association refused to hand over the office and relevant documents of the member workers to the newly elected Executive Committee. Even though this Respondent Association has obtained direction from High Court, the previous Executive Committee intentionally violated the direction of High Court and the order of District Registrar. At that time, the Petitioner was the clerk of association left his clerical job himself before the constitution of new Executive Committee without informing to principal employer or the previous Executive Committee of this Respondent Association. Even though this Respondent made so many attempts to call the petitioner by all means, the attempts were ended in vain. After that this Respondent after obtaining proper approval for clerical appointment has appointed a clerk in August, 2001 to carry out the day to day work of the association. In view of the facts and circumstances of the case, the Petitioner is not entitled for reinstatement into service with continuity of service, back wages and other attendant benefits. Hence, the Respondent prays to dismiss the claim of the Petitioner.

5. In these circumstances, the points for my consideration are :

(i) "Whether the action of the Respondent/ Management in terminating the services of the Petitioner w.e.f. 1-4-2001 is justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

6. The case of the Petitioner is that the members of Respondent association are workers, who were engaged on contract basis in the Chennai Port Trust mechanical ore handling plant and as per Memorandum of Understanding between the association and Chennai Port Trust, he was appointed as a full time clerk in the Respondent association from 1-1-97 and from that date onwards, he was allowed regualar pay scale and other usual benefits as annual increment, bonus etc. While so, to his shock and surprise, after the newly elected President & General Secretary of the association was constituted, they have denied the employment to the Petitioner and they have not permitted the Petitioner to continue the services of Petitioner as a clerk in the Respondent association from 1-4-2001 and no charge memo was issued nor any enquiry was conducted against him before termination. As such, no opportunity

was given to him as per Clause 26(d) of Standing Orders governing Respondent association before issuing oral termination. Further, the association has appointed a new person as a clerk in his place whimsically in a most abitrary manner to fulfil their personal interest and gain in violation of rules and procedures stipulated under I.D. Act, hence, he raised this dispute.

7. But, as against this, the Respondent association contended that it is false to contend that the Petitioner was terminated from service by the newly elected office bearers of the association. On the other hand, as per the orders of High Court and District Registrar, the new office bearers were elected on 27-3-2001 but, for the reasons best known to the Petitioner, he has not appeared before the District Registrar or attended the office at the time of constitution of new Executive Committee on 27-3-2001 and he has voluntarily abandoned his post. Even in the letters addressed to the principal employer namely Port Trust, he has demanded wages of April & May, 2001 and also EPF contribution which has to be remitted before the concerned authorities, but he has not asked any reinstatement nor all the back wages. Under such circumstances, he is not entitled to any relief.

8. The Petitioner examined himself as WW1 and marked 12 documents namely Ex.W1 to W12. On the side of the Respondent Association, the General Secretary of the association one Mr. Govindaswamy was examined as MW1 and on their side 10 documents were marked as Ex. M1 to M10.

9. The Petitioner as WW1 has stated what are all he has pleaded in the Claim Statement. Learned counsel for the Petitioner contended that as per the Standing Orders Clause 12 and Clause 26(d), copies of which are marked a Ex.W11 and W12 wherein it is clearly stated that how the members of association can be removed and what are all the rights of members and under clause 26(d) the procedure for dismissal was clearly stated. But, without following any rules or procedure, the Respondent association, who is a contractor under the principal employer namely Chennai Port Trust has terminated the Petitioner orally without following the mandatory provisions and without following the procedure laid down under standing orders which is arbitrary and illegal. Learned counsel for the Petitioner further contended that in 1993 3 SCC 259 D.K. Yadav Vs. J.M.A. Industries Ltd. wherein the Supreme Court has held that "no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person. No decision must be taken which will affect the right of any person without his/her first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. Certified Standing Orders have statutory force and therefore, the same must be inconsonance with the principles of natural justice and mandates of Articles 14 & 21 and therefore, automatic termination under Certified Orders on absence without or beyond the period of sanctioned leave for more than 8 days" and the Supreme Court has held that "termination without holding any domestic enquiry or affording any opportunity to workman is a violative of principles of natural justice under Articles 14 & 21 of Constitution and Section 25F of I.D. Act." Relying on this decision, learned counsel for the Petitioner contended that though the association has got standing orders for taking disciplinary action against the erring worker/member in this case, the Respondent association has not followed any procedure for terminating the services of the Petitioner and they have terminated the Petitioner orally without following any mandatory provisions or procedure laid down under standing orders which is arbitrary and illegal. He has also relied on the rulings reported in 1978 I LLJ 1 Delhi Cloth & General Mills Ltd. Vs. Shambhu Nath Mukherjee and others wherein the Supreme Court has held that "striking the name of workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of Section 2(oo) of I.D. Act. There is nothing to show that provisions of Section 25F (a) & (b) were complied with by the management in this case. The provisions of Section 25F(a) proviso apart, (b) are mandatory and any order of retrenchment in violation of these two peremptory condition precedent is invalid." Learned counsel for the Petitioner relying on these decisions argued that since no enquiry was conducted against the Petitioner, no notice of termination was issued to him, the action taken by the Respondent association is invalid and it is to be set aside.

10. But, as against this, learned counsel for the Respondent contended that the Petitioner who worked as a clerk himself left the clerical job without informing anybody before the new Executive Committee taken the charge on 27-3-2001 and thus, he voluntarily abandoned his job, under such circumstances, he is not entitled to any relief. Further, he has argued that though the Petitioner alleged that the newly elected President and General Secretary of the Respondent association denied him employment and had not permitted him to continue his service as a clerk in the association from 1-4-2001, he has not established this fact with any satisfactory evidence and there is no proof that the newly elected office bearers of the Respondent association has denied employment to the Petitioner. When the Petitioner has alleged in his Claim Statement that the association is only a contractor and not vested with power or authority to issue appointment or order of termination, then how the Petitioner can raise that new office bearers of the Respondent association has denied his employment which is contradictory statement taken by the Petitioner. Though the Petitioner alleged that appointment of another clerk in his place is illegal and with mala fide intention,

there is no mala fide on the part of the Respondent association because the Petitioner who was appointed as a clerk by the then Executive Committee of the Respondent association has stayed away from duty abruptly without giving prior information and without getting permission either from the then Executive Committee or from the principal employer and the efforts made by the Respondent association to search the Petitioner's whereabouts were ended in vain. Under such circumstances, the Respondent association has approached the principal employer to appoint another clerk in the place of the Petitioner and it was approved by the principal employer. Under such circumstances, it cannot be said that appointment of another clerk is mala fide intention on the part of the Respondent association. It is the further contention of the learned counsel for the Respondent that though the Petitioner alleged that clause 12 and 26(d) are applicable to him, in reality, they are not applicable to the Petitioner because the said clauses are applicable only to members of the association who are workers of the mechnical ore handling plant of Chennai Port Trust. Since the Petitioner is not a member of the society or worker of the mechanical ore handling plant of Chennai Port Trust, he cannot take advantage of the procedure laid down under standing orders. Further, though the Petitioner alleged that he has sent several representation to the principal employer and marked Ex.W3 and W4 letters dated 12-5-2001 and 15-6-2001 in all these letters he has not alleged anything about the termination made by the association office bearers. Further, he has not sent any copy of these letters to the Respondent association, according to him is the direct employer and thus, it is clear that the Petitioner has taken different stand for the purpose of this case. It is clearly admitted by the Petitioner that he had not reported for duty on 27-3-2001 when the newly elected office bearers have taken charges of the association in Bhaghat House, Broadway, Chennai-1. Though he alleged that in Ex.W3 and W4 when he was all along attended the office at Bhaghat House, Broadway, Chennai from the documents produced by the Respondent, it is clear that the office of the association has been changed to union office and subsequently, it is running at 8/15, Barracks Road, Chennai-1. The Petitioner has not stated that he has all along worked in Respondent association from 1-4-2001. Though he alleged that he worked in the office at Bhaghat House, Broadway, Chennai-1 for which there is no proof and even though he alleged that the worked in the months of May & June, 2001 he has changed his version and claimed back wages on the ground that he was illegally terminated from 1-4-2001, as such, he has made several contradictory claims against the Respondent. From the evidence of the Petitioner and from the documents produced by the Respondent, it is clear that the Petitioner has not attended the office from 27-3-2001 and he has voluntarily abandoned his service from the Respondent association and it can be only an inference to be drawn in the circumstances shown by the Petitioner.

Learned counsel for the Respondent relied on the ruling reported in 1993 II LLN 346 M. Sankaranarayanan Vs. First Additional Labour Court & Another wherein the Madras High Court while considering a similar case has held that "labour judge apart from taking into consideration the conduct of workman and other relevant circumstances also relied upon the admission stated to have been made by the workman expressing his unequivocal intention to abandon the services and the labour Judge has also stated if really the Petitioner was in the employment of Respondent and his services were terminated only in October, 1978 one would normally expect the Petitioner to have received his salary from the Respondent till then. But, curiously, the Petitioner has come forward with a claim petition claiming salary and batta from November, 1977 onwards which is highly unbelievable that the Petitioner was working for a period of one year without getting the wages" and finally it has held that "the finding of fact arrived at by the Labour Court that the Petitioner had voluntarily abandoned the services and consequently, he was not entitled to wages for the period as claimed for by him cannot at all be disturbed by this Court" and dismissed his claim. Further, learned counsel for the Respondent further relied on the ruling reported in 1979 I LLN 331 G.T. Lad Vs. Chemical and Fibers of India Ltd. Wherein the Supreme Court "has defined the word 'abandonment' and stated it must be total and under such circumstances, it is clear to indicate on absolute relinquishment. The failure to perform duties pertaining to office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an abandonment of office." Taking advantage of this, learned counsel for the Respondent contended that in this case, the Petitioner has wantonly abandoned his service from the Respondent association and this abandonment is total and complete giving up his duties so as to indicate the intention not to resume the same and therefore, he is not entitled to any benefits as claimed by him.

11. Then, again learned counsel for the Respondent contended that in his Claim Statement and also in his evidence, the Petitioner has stated that the High Court pleased to pass an order on 30-3-2004 directing the Chennai Port Trust and Respondent association to consider and dispose of the representation of the Petitioner dated 21-1-2004 within the period of weeks from the date of receipt of copy of the order dated 30-3-2004 and he has marked the copy of the order under Ex. W6. But, on a perusal of this order, it is clear that the High Court has not stated to consider the representation of the Petitioner, on the other hand, direction was given by the High Court to dispose of the representation made by the Petitioner dated 21-1-2004 and this Respondent has given a reply to the representation on 8-2-2004 under Ex. M9. Further, it is the allegation of the

Petitioner in the Writ Petition filed by the Petitioner that he has prayed for reinstatement and also arrears of wages before the High Court. But, the Hon'ble High Court has not granted the said relief but only gave direction to the Port Trust and also the Respondent herein to dispose of appeal filed by the Petitioner. Therefore, the order passed by the High Court is an adverse order given to the Petitioner, but the Petitioner has not preferred any appeal against the order of Writ Petition. Therefore, he cannot re-agitate the matter for reinstatement and also for back wages before a different forum on the principle of res judicata. Further, he argued that it is well settled by Supreme Court in various decisions that general principle of res judicata applies to industrial adjudication. He relied on the rulings reported in 2005 1 SLJ 364 Executive Engineer, ZP Engineering Division & Another Vs. Digambara Rao, wherein the Supreme Court has held that "Respondent herein approached the High Court with full knowledge that their services had been terminated ..... Having got an adverse order in Writ Petition, it was not open to the Respondent to re-agitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the Respondent and re-decide the matter in the face of earlier decision of High Court in the Writ Proceedings." He further relied on the rulings reported in 2003 AIR SCW 5725 Pondicherry Khadi & Village Industries Board Vs. P. Kulothangan & Another wherein the Supreme Court has held that "in our opinion, the appellant has correctly contended that industrial dispute pertained to the same subject matter dealt with in the earlier writ proceedings and was barred by the principles of res judicata. It is well established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Code are applicable including the principles of constructive res judicata." Relying on these decisions, learned counsel for the Respondent contended that since the Petitioner with full knowledge had approached the High Court for reinstatement and also arrears of back wages and he having obtained an adverse order in the Writ Petition cannot now re-agitate the matter before different forum namely this Tribunal and it is barred by principles of res judicata.

12. On considering the arguments of learned counsel for the Petitioner and also Respondent, though I find the Respondent has not terminated the services of the Petitioner, the Petitioner has voluntarily abandoned his service with the Respondent Association. It is clear from the contention of the Petitioner in Exs. W3 and W4 that he has made the allegation as if he has worked in April, 2001 and May, 2001 but he has taken the stand before the High Court and also before this Tribunal that the Respondent has terminated his service and he was denied employment which is contradictory to each other. On the other hand, it is clear from the records and also from the evidence adduced on either side that the Petitioner has not worked from 27-3-01, the day on which new office bearers of Respondent Association has taken charge of the Respondent Association and further, he has not attended the office subsequent to 27-3-2001. The Petitioner has not stand any reason for his non-attending the office from that date onwards. Further, even though the Petitioner has sent letters under Exs. W3 & W4 to the principal employer, he has not sent any letter to the Respondent/Association, who is his direct employer. Nearly three years after i.e. on 1-1-2004 he sent an appeal to the Chennai Port Trust and also a copy to the Respondent Association alleging that the principal employer has not considered all his representation and requested the Chairman to direct the employers to kindly consider his various representations made to them. As I have already pointed out that under Exs. W3 & W4 he claimed only wages for April & May, 2001 and also EPF amount to be remitted to the PF authorities, but it is established from the evidence that he has not worked in the Respondent Association during April & May, 2001 and he has left the services of the Respondent Association, who is the direct employer of Petitioner, without any reasonable cause. Under such circumstances, I have no hesitation to come to the conclusion that he has voluntarily abandoned his work without any reason from the Respondent Association and only as an after thought, after a long lapse of time namely three years he has filed Writ Petition before High Court for reinstatement and arrears of salary. Further, copy of the affidavit filed before the High Court is not marked before this Court, but he has admitted that he has made a prayer for reinstatement and also arrears of salary which was denied by the High Court and he has not taken up the matter on appeal. Even after the Chennai Port Trust and also Respondent Association had rejected his claim, he has not taken any action against the respondent before the High Court, but again he has come forward with the claim of reinstatement and back wages before this Tribunal. Under such circumstances, I find his claim is barred by laches on his part and also on the ground that he has voluntarily abandoned his service with the Respondent Association. As such, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

13. In view of my foregoing findings that the Petitioner has voluntarily abandoned the services of Respondent Association, I find the Petitioner is not entitled to any relief. No Costs.

14. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th September, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri V. Jeyaraman

For the Respondent : MW1 Sri D. Govindaswamy

Documents Marked :

For the I Party/Petitioner :

Ex. No.	Date	Description
W1	18-12-96	Xerox copy of the appointment order issued by Respondent.
W2	18-10-96	Xerox copy of the sanction order issued by Port Trust.
W3	12-5-01	Xerox copy of the appeal made to Chennai Port Trust.
W4	15-6-01	Xerox copy of the reminder to Chennai Port Trust.
W5	21-1-04	Xerox copy of the appeal made to Chennai Port Trust.
W6	30-3-04	Xerox copy of the order of High Court.
W7	18-6-04	Xerox copy of the reply given by Chennai Port Trust to the Order of High Court.
W8	4-2-05	Xerox copy of the dispute raised by Petitioner.
W9	29-04-05	Xerox copy of the failure of conciliation report.
X10	31-8-05	Xerox copy of the reference made by Govt.
W11	Nil	Extract of clause 12 of Bye Laws.
W12	Nil	Extract of clause 26(d) of Standing Orders of Respondent.

For the II Party/Management :

Ex. No.	Date	Description
M1	12-1-01	Xerox copy of the Order of High Court in W.P. 9571/2000.
M2	27-2-01	Xerox copy of the intimation letter to members of Association by Registrar.
M3	2-4-01	Xerox copy of the acceptance letter with newly elected list of executive committee from Registrar.
M4	18-9-02	Xerox copy of the letter from Respondent to Chennai Port Trust for documents.
M5	8-11-02	Xerox copy of the reply given by Chennai Port Trust.
M6	24-12-02	Xerox copy of the letter to Registrar from Respondent for the previous documents.
M7	29-4-03	Xerox copy of the order of High Court calling for records.
M8	4-7-03	Xerox copy of the letter from Registrar to Respondent.
M9	8-2-04	Xerox copy of the letter sent by Respondent to Petitioner.
M10	27-2-04	Xerox copy of the letter to Petitioner by certificate of posting.

नई दिल्ली, 15 नवम्बर, 2006

का. आ. 4753.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मार्मागाव पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं-2, मुम्बई के पंचाट (संदर्भ संख्या 2/26/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-36011/1/2006-आई आर (बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 15th November, 2006

S.O. 4753.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/26/2006) of the Central Government Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Mormugao Port Trust and their workmen, which was received by the Central Government on 15-11-2006.

[No. L-36011/1/2006-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT MUMBAI (CAMP : GOA)

PRESENT :

A. A. LAD, Presiding Officer.

Reference No. CGIT-2/26 of 2006

Employers in Relation to the Management of MORMUGAO PORT TRUST

The Chairman,
Mormugao Port Trust,
Headland Sada,
Goa-403804

AND

Their Workman

The General Secretary,
Mormugao Port & Railway Workers Union,
Main Administrative Office Building,
Mormugao Port Trust,
Headland Sada,
Goa-403804.

APPEARANCE :

For the Employer : Mr. M.B. Anchan, Advocate.

For the Workmen : In person

Date of passing of Award : 27th September, 2006
At Goa Camp.

AWARD

1. The Government of India, Ministry of Labour by its Order No. L-36011/1/2006/IR (B-II) dated 17-5-2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Mormugao Port Trust, Goa in denying promotion to Shri Cyril Mascarenhas, Licence Driver of DC's Department is legal and justified ? If not, to what relief the workman is entitled ?"

2. After receiving reference, matter was fixed for filing Statement of Claim. However, both parties arrived to settlement as per Exhibit-5. After verifying the contents of it and signatures of both parties, following order is passed :

ORDER

Reference is disposed of vide Exhibit-5.

Dated : 27-09-2006 A.A. LAD, Presiding Officer
At Goa Camp

Exh-5

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Reference No. CGIT-2/26 of 2006

Employers in Relation to the Management of Mormugao Port Trust

AND

Mormugao Port & Railway Workers Union

MAY IT PLEASE YOUR HONOUR :

Both the parties to the above dispute i.e. the Mormugao Port Trust, Goa and the President, Mormugao Port & Railway Workers Union, Vasco da Gama, Goa, have after prolonged discussion have amicably settled the above reference as under :

TERMS OF SETTLEMENT

1. Whereas the workman Shri Cyril Mascarenhas. Driver-I, EDP no. 140200 of marine Department was served with the charge sheet dated 6-5-2000 for fraudulently claiming LTC based on false documents and misapropriating public fund of Rs. 11,696. And whereas he had admitted his guilt vide his reply dated 19-6-2000 to the charge-sheet.

2. And whereas the Disciplinary Authority after taking a lenient view has warned Shri Cyril Mascarenhas to refrain from committing such acts in future and orders ban on availing LTC for the next two blocks 2002-2005 and 2006-2009.

3. And whereas Shri Mascarenhas has preferred an Appeal dated 30-1-2006 to the Appellate Authority pleading that the penalty imposed on him is severe and deprived him of his promotion till 2009. And whereas the Appellate Authority having gone through the facts of the case has observed that the cumulative effect on the employee is severe as he would be ineligible for promotion till 2009 after taking lenient view modified penalty to that of "severely warm Shri Mascarenhas to refrain from committing such acts in future and orders ban on availing LTC for one block of 2002-2005."

4. Now the President of the Union has filed an application stating that the Union is not interested in pursuing the above dispute.

5. Shri Mascarenhas is now eligible for promotion for the post of AEN(M) due to relaxation of punishment of ban on availing LTC from two block years (2002-2005 & 2006-2009) to one block year (2002-2005) and Shri Mascarenhas requested the Management to consider his case for promotion, as and when, the vacancy arises for which the Union has no objection.

2. Both the parties therefore pray that the above reference may be disposed of accordingly.

For and behalf of the Mormugao Port Trust — For and behalf of the Mormugao Port & Railway Workers Union

(U.T. GAYAKWAD)
Constituted Attorney
For the Port of Mormugao

(A.J. PETERS)
President/MPRWU

नई दिल्ली, 15 नवम्बर, 2006

का. आ. 4754.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/82/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/51/2001-आई आर (बी-II)]
राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 15th November, 2006

S.O. 4754.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/82/2001) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Canara Bank Staff Section and their workman which was received by the Central Government on 15-11-2006.

[No. L-12011/51/2001-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

A.A. LAD, Presiding Officer

Reference No. CGIT-2/82 of 2001

Employers in Relation to the Management of
Canara Bank,
Canara Bank Staff Section,
The Divisional Manager,
Maker Tower 'E' Wing,
Circle Office, Mumbai-400005

AND

Their Workman
The Working President,
Canara Bank, Karamchari Sena,
Canara Bank, Warden House,
Mumbai-400001,
(Sanjay A. Dhuri)

APPEARANCE:

For the Employer : Mr. R.P. Rele, Mr. J.V. Mhaske, Mr. S.V. Alva, Advocates.

For the Workmen : Mr. Jaiprakash Sawant, Advocate

Date of reserving Award : 1st September, 2006.
Date of passing of Award : 11th October, 2006

AWARD

The matrix of the facts as culled out from the proceedings are as under :

1. The Government of India, Ministry of Labour by its Order No. L-12011/51/2001 IR (B-II) dated 18th/22nd June, 2001 in exercise of the powers conferred by clause (d) of sub-section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the Management of Canara Bank is justified by not regularizing the services of Shri Sanjay A. Dhuri, in the permanent cadre of the Bank ? If not, then what relief the workman is entitled to ?"

2. To support the subject matter referred in the reference 2nd Party, through the President of Canara Bank Karamchari Sena, filed Statement of Claim at Exhibit 8 stating and contending that, the Workman was employed by the Management with effect from 8th June, 1992 to attend to the permanent nature of work of cleaning, sweeping, scavenging etc. Workman was required to complete by the said work within four hour per working day. The concerned Workman was considered by the Management as daily wager and he was paid @ Rs. 28 per day. First Party was not paying him the wages as per the scale and he was deprived by the act of the 1st Party. Though the concerned workman as Part Time Employee worked on ½ scale wages w.e.f. 6-4-1994 against clear vacancy still he was not made permanent. There was work. It is of periodical nature. According to Union he ought to have been made permanent but was not made, So it is prayed that, the 1st party be directed to make concerned Workman Shri Sanjay A Dhuri as permanent employee and to give him benefits of it.

3. This prayer of the Second Party Union is disputed by the 1st Party by filing written statement at Exhibit 9 stating and contending that, the dispute is raised after four years without explaining as to why it was late. It does not require to be considered. It is an admitted position that, the concerned workman was part timer, employed by the 1st Party. His name was never included in the regular daily wagers' panel. Since he comes under daily wagers, payers he cannot be considered to made permanent. When he is not coming in daily wagers panel, question of his permanency does not arise. Besides, he was not qualified to be employed with the 1st Party. There is specific recruitment policy and as per that only employees are taken. So it is submitted that prayer prayed by the 2nd Party Union to regularize the concerned Workman Dhuri is not worth to consider and to allow.

4. In view of the above pleadings my Ld. Predecessor framed Issues at Exhibit 11 which I answer as under :

Issues		Findings
1.	Whether the reference suffers from latches on the count of Delay ?	Does not arise
2.	Whether Union proves that Management gave discriminatory treatment to Dhuri for absorbing him in the post of Sub-staff of full timer ?	No
3.	Whether the action of the Management of Canara Bank is justified by not regularizing the services of Shri S.A. Dhuri in the permanent cadre of the Bank ?	Does not survive
4.	What relief Mr. Dhuri is entitled ?	Does not arise.

REASONS :

Issue Nos. 1 to 4 :

5. 2nd Party Union agitated point of non-regularisation of Sanjay Dhuri, the concerned Workman, stating that, he was working from 8th June, 1992 on daily wages and is not regularized till this date. Whereas case of the First Party is that since he was not on Panel of "regular daily wagers", question of regularizing him does not arise.

6. To support that 2nd Party Union placed reliance on the affidavit of U.R. Pendnekar filed at Exhibit 15 and affidavit of concerned Workman Dhuri produced at Exhibit 16. 2nd Party Union also relied on the affidavit of Shri S.K. Kolte, working President of the 2nd Party Union, filed at Exhibit 18. Whereas 1st Party placed reliance on the affidavit of Chandershakhar Dixit, employee of the 1st party, filed at Exhibit 19.

7. From this evidence it is crystal clear that the concerned Workman is working with 1st party from June, 1992. However, the concerned Workman who is examined at Exhibit 16 admits that, he was on probation from 11-9-1996 and is made permanent by letter dated 11-3-1997 which is produced at Exhibit 14.

When this Workman admits that he is made permanent question arises what remains in his prayer ? His prayer is to regularize him whereas in the cross he admits that he is made permanent by letter dated 11-3-1997. Even he has filed it at Exhibit 14. When the subject matter of the prayer is already complied by the First Party by its letter dated 11-3-1997 in my considered view, the question of now regularizing the services of the concerned workman Dhuri does not survive.

8. In view of the discussions made above I answer above Issues in negative and passing the following order :

ORDER

Reference is rejected with no order as to its costs.

Mumbai,
11th October, 2006.

A.A. LAD, Presiding Officer

नई दिल्ली, 15 नवम्बर, 2006

का. आ. 4755.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चेयरमैन, कोची स्टीमर वाचमैन स्कीम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अरनाकूलम, कोची के पंचाट (संदर्भ संख्या आई डी. 88 ऑफ 2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-35011/7/99-आई आर (एम)]
एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 15th November, 2006

S.O. 4755.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. 88/2006) of the Central Government Industrial Tribunal-cum-Labour Court Ernakulam, Kochi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Chairman, Cochin Steamer Watchmen Scheme and their workman, which was received by the Central Government on 15-11-2006.

[No. L-35011/7/99-IR (M)]
N.S. BORA, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, EARNAKULAM

PRESENT :

Shri P.L. Norbert, B.A., LL.B., Presiding Officer

(Friday the 27th day of October, 2006/5th Karthika, 1928)

I.D. 88/2006

(I.D. 18/2001 of Labour Court, Ernakulam)

Workmen 1. P.A. Mohammad Ashraf,
S/o Abdul Rahman,
Puthuparambu, XIII/919,
Karuvelipady,
Kochi-5

2. Mubarak P.A.
S/o Abdu,
Pandaraparambu, VII/942,
Panayappally,
Kochi-2

3. Hussain M.A.,
S/o Abdul Khader,
H. No. 11/858,
C.P. Thodu,
Kochi-1

Adv. Shri A.X. Varghese

Management 1. The Chairman (Governing Body)
Cochin Steamer Watchmen Scheme,
Harbour Road, Willingdon Island,
Kochi-1.

2. The Chairman,
Cochin Port Trust,
Willingdon Island,
Kochi-3.

3. The Secretary,
Cochin Steamer Agents Association,
Willingdon Island,
Kochi-3.

Adv. M/s B.S. Krishnan Associates

AWARD

This is a reference made by Central Government under Section 10 (1)(d) of Industrial Disputes Act, 1947 for adjudication. the reference is :

"Whether the industrial dispute raised by Sh. P.A. Mohammed Ashraf and two others vide their rep. dated 10-7-98 (copy enclosed) against the mgt. of the Chairman (Governing body), Cochin Steamer Watchmen Scheme and the President, Cochin Steamer Agents Association justified ? If so, to what relief the concerned workmen are entitled ?"

2. When the matter was taken up for evidence the workmen remained absent. Their counsel sought an adjournment. The workmen were given sufficient opportunity to adduce evidence. Despite the order for evidence finally the counsel for the workmen as well as workmen are not ready. None of the workmen is present. There is no point in adjourning the dispute without valid reason. Hence an award is passed finding that the industrial dispute raised by the workers against the management cannot be justified. No cost. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 27th day of October, 2006.

P. L. NORBERT, Presiding Officer

APPENDIX : Nil

नई दिल्ली, 16 नवम्बर, 2006

का. आ. 4756.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स किलबर्न कैमिकल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई (मद्रास) के पंचाट (संदर्भ संख्या आई. डी. 118 ऑफ 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2006 को प्राप्त हुआ था।

[सं. एल-29012/26/2005-आई आर (एम)]
एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4756.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.I. D. 118/2005) of the Central Government Industrial Tribunal/ Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Kilburn Chemicals Ltd. and their workmen, which was received by the Central Government on 15-11-2006.

[No. L-29012/26/2005-IR(M)]
N. S. BORA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 12th September, 2006

PRESENT:

K. Jayaraman, Presiding Officer

Industrial Dispute No. 118/2005

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of M/s. Kilburn Chemicals Ltd. and their workmen]

BETWEEN:

Sri D. Mahesh : I Party/Petitioner

AND

The Director, M/s. Kilburn Chemicals Ltd., Tuticorin : II Party/Management

APPEARANCE:

For the Petitioner : M/s. Sivam Sivanandraj, Advocates

For the Management : M/s. R. Parthiban, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-29012/26/2005-IR(M) dated 9-11-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :

"Whether the dismissal of Shri D. Mahesh by the management of Kilburn Chemicals Ltd., Tuticorin is legal and justified ? If not, to what relief the workman is entitled ?"

2. After the receipt of the reference, it was taken on file as I. D. No. 118/2005 and notices were issued to both the parties and they have entered appearance through their Advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner joined as a process operator in the Respondent/Management on 16-5-94 and he was serving as a permanent employee. The Respondent had been acting with an intention to victimize the Petitioner for his active involvement in formation of labour union. While so, the Petitioner was charge-sheeted on the allegation that on 9-3-2004 the Petitioner was negligent in the work and left the work spot during the working hours without permission which resulted in overflow of black liquor and consequently production loss. A domestic enquiry was conducted and termination order was issued to him on the basis of findings of the Enquiry Officer. But the charge levelled against the Petitioner is false. The Petitioner has been terminated from service vindictively and without any legal basis. The findings of the Enquiry Officer is on conjectures and surmises and not on the basis of legal evidence. On the date of occurrence i.e. 9-3-2004 the Petitioner along with one Mr. Sankar were on duty in the clarifier section (work spot). It is pertinent to note that work spot consists of ground as well as first and second floor. The Petitioner was engaged in 1st and 2nd floor in preparation of infloc solution from 8.45 a.m. to 9.45 a.m. and Mr. Sankar was engaged in ground floor works. While so, it is alleged that LC 10B pump located in ground floor was started at 9.05 hrs and the tank LC10B overflown between 9.05 and 9.25 a.m. resulting in loss of 0.5 MT of liquor. The management accused both the Petitioner and Mr. Sankar with negligence. But at the relevant time, Mr. Sankar who was on the ground floor admitted his guilt and apologized for that. The Petitioner has no knowledge about the alleged occurrence. The Enquiry Officer without appreciation of the real facts and application of his mind has wrongly held that the charge against the Petitioner is proved and on the basis of such report, the Petitioner's services have been terminated. But, the findings of the Enquiry Officer is against the principles of natural justice and only to satisfy the preconceived desire of the Respondent/Management to victimize the Petitioner. Further, the charge has been falsified by the Respondent/Management witnesses themselves who have deposed to the fact that Petitioner was engaged on 1st and 2nd floor in preparation of infloc solution. It is false to contend that the Petitioner went away from the work spot without permission. Further, in the enquiry the Enquiry Officer refused to produce copy of apology letter of Mr. Sankar in spite of Petitioner's request to produce the same before enquiry. Infloc solution is prepared in every shifts and the same has been admitted by management witnesses and infloc solution prepared by the Petitioner is used in 'A' shift. It is admitted that there is no movement register in the Respondent/Management. While so, the Enquiry Officer's findings that he has not informed before preparing the infloc solution is imaginary. The Petitioner cannot be punished for the negligence act of co-worker that too after his apology for his misconduct. Therefore, the action taken against the Petitioner by the Respondent/Management and suspension order passed against him is illegal. Further, none of the alleged past charges or misconduct were brought to his notice nor any explanation was called for from him. The co-worker namely Mr. Sankar was not enquired, suspended or subjected to any domestic enquiry. Hence, for all these reasons, the Petitioner prays this Tribunal to pass an award reinstating him into service with full back wages and other attendant benefits.

4. As against this, the Respondent in its Counter Statement contended that the Respondent/Management is engaged in manufacturing of titanium Dioxide (Anatase). The Petitioner was appointed as a process operator trainee on 16-5-94 and he was regularised w.e.f. 1-11-96. The Petitioner while working in 'A' shift on 9-3-2004 in clarifier section at about 9.25 hrs. 3 Cu. M of black liquor was found overflown into the drain from LC 10B tank. The Petitioner was not found in work spot and due to negligence left the work spot during working hours without prior permission and the Respondent incurred a production loss of about 0.5. MT of TiO_2. Therefore, a charge memo was issued to the Petitioner on 9-3-2004 as per clause 21 sub-clause 15 of certified Standing Orders of the company. Though the Petitioner submitted an explanation but since the said explanation given by the Petitioner is not satisfactory, the management decided to conduct domestic enquiry and Enquiry Officer was appointed by Respondent/ Management and he has submitted his report to the Respondent on 21-9-2004 holding that the Petitioner was guilty of charges. After following the procedure, the

management passed a final order of dismissal on 19-10-2004. At the time of passing the final order, the nature of charge, past records and interest of the company were also taken into account by the Respondent/Management. The Petitioner has to prove that he was the Secretary of the trade union before this Tribunal. The onus of establishing victimisation lies only on the Petitioner. The co-worker Mr. Sankar was also issued with chargesheet and the co-worker pleaded guilty in his explanation and hence he was imposed with lesser punishment and that will not be a discrimination as alleged by the Petitioner. Since the charge levelled against the Petitioner is a grievous one, the punishment of dismissal is proportionate to the charge. In the enquiry, copy of apology letter given by Mr. Sankar is not at all necessary and moreover, anything happened in clarifier section, both the employees are responsible for the incident and that was accepted by the Petitioner during enquiry proceedings also. No log book was maintained in the lab. The enquiry was conducted observing principles of natural justice and the Respondent/ Management after considering the entire report of the Enquiry Officer including past records passed the final order. Hence, the order of dismissal is not disproportionate. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. Again, the Petitioner in its rejoinder contended that the management does not maintain any movement register for its personal at the factory and therefore, the findings of the Enquiry Officer with regard to permission and also about the movement register are imaginary. The Enquiry Officer has given a finding without any basis and merits and stepping into the shoes of the management. The Petitioner reiterates its claim that no allegation or charges was levelled against the Petitioner prior to incident and the Petitioner was not issued with memo or show cause notice earlier. Hence, for all these reasons, he prays for an award in his favour.

6. In these circumstances, the points for my consideration are :

(i) "Whether the dismissal of the Petitioner by the Respondent/Management is legal and justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

7. The admitted case of the parties is that the Petitioner Mr. D. Mahesh was working as a process operator in the services of the Respondent/Management and the charge framed against the Petitioner is that on 9-3-2004 while the Petitioner was working in clarifier section at about 9.25 hrs. 3 Cu. M of black liquor was found overflown into the drain from LC 10B tank. The Petitioner was not found in the work spot and it is only due to the negligence and neglect of duty and leaving the work spot without prior permission, the Respondent/Management incurred production loss of 0.5 MT of Titanium Dioxide. As against this, Petitioner contended that there is no negligence on the part of the Petitioner on that date he along with one Mr. Sankar were on duty in clarifier section, it is also a work spot and the work spot consists of ground, first and second floors. While he was engaged in the 1st and 2nd floor in preparation of infloc solution between 8.45 a.m. and 9.45 a.m., Mr. Sankar was engaged on ground floor works. The management though accused both the Petitioner and Mr. Sankar for negligence at the relevant time, Mr. Sankar on the ground floor admitted the negligence and apologised. Since the Petitioner has no knowledge about the occurrence and there is no negligent on the part of the Petitioner, the findings given by the Enquiry Officer that the charges framed against the Petitioner as proved is perverse and without any legal evidence. Hence, the punishment imposed on the Petitioner by the Respondent/Management is illegal.

8. Therefore, though the Petitioner has not questioned the conduct of enquiry, the Petitioner contended that the findings given by the Enquiry Officer and the punishment imposed by the Disciplinary Authority is perverse and without any legal evidence. Therefore, the Tribunal has to go into the question whether the charges framed against the Petitioner has been proved against the Petitioner and whether the findings given by the Enquiry Officer is perverse and without any legal evidence ? It is well settled that only in cases where the findings of Enquiry Officer are based on 'no evidence' or are 'so unreasonable' that no reasonable man could have ever come to it or the decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it or that it is so absurd that one is satisfied that the decision maker must have taken leave of his senses. Then it would call for interference by the Tribunal and legal adjudicators. In other words, the jurisdiction of the Tribunal to interfere with the findings of the Enquiry Officer will arise when the findings of the Enquiry Officer are perverse or in violation of rules of natural justice.

9. In this case, learned counsel for the Petitioner contended that no doubt, the Petitioner and Sri Sankar were on duty in the clarifier section on 9-3-2004 at about 9.45 a.m. and it is also established in the enquiry that the Petitioner was engaged in the preparation of infloc solution which is situated in the 1st and 2nd floor and the co-worker namely Mr. Sankar alone was engaged in ground floor work. It is also the evidence in this case that at 9.05 hrs. LC10B pump located in ground floor was started and the tank LC10B overflown between 9.05 and 9.25 hrs. resulting in loss of 0.5 MT of liquor. In this case, though the management has issued chargesheet to both employees namely Petitioner and Mr. Sankar, Mr. Sankar who was on the ground floor has admitted his negligence and apologized for that.

The Petitioner who was also charged for the same misconduct has disputed the misconduct and he has alleged that he has not negligent and he has not left the work spot during the working hours without permission and therefore, he had no knowledge about the alleged occurrence and he was under the preparation of infloc solution in the 1st and 2nd floors and therefore, he has not committed any mistake and the findings given by the Enquiry Officer is perverse.

10. But, on the other hand, learned counsel for the Respondent contended that both these persons namely the Petitioner and Mr. Sankar are liable for the loss occurred to the Respondent/Management and both are liable for the misconduct. Under such circumstances, it cannot be said that the Petitioner is innocent and he has no knowledge about the alleged occurrence and the Enquiry Officer in his findings clearly stated that even though the Petitioner has alleged that he has gone to prepare infloc solution but he has not intimated the same to the higher officers who is incharge of the same and he has not entered in any register about his work and under such circumstances, it cannot be said that the findings given by the Enquiry Officer is perverse and the finding is without any legal evidence and therefore, at no stretch of imagination, it can be said that the punishment imposed by the Respondent/Management is disproportionate to the charge framed against the Petitioner. It is further contended that though the Petitioner alleged against the co-worker Mr. Sankar that no enquiry was conducted and no punishment was imposed on him the said Mr. Sankar was also charged and he pleaded guilty and he was awarded with lesser punishment and it cannot be said as discrimination as alleged by the Petitioner.

11. But, learned counsel for the Petitioner contended that the findings of the Enquiry Officer is on conjectures and surmises and not on the basis of legal evidence. It is not the case of Respondent/Management that preparation of infloc solution is not the work of the Petitioner and it is also not the case of the Respondent/Management that before preparing infloc solution, he has to obtain permission of higher ups and also to make an entry in the movement register. Further, it is the evidence of the witnesses that there is no movement register maintained in the Respondent/Management and it is not necessary for getting permission from the senior officers before preparing infloc solution. It is his further contention that though two persons are responsible for maintenance of clarifier section, the Petitioner namely one of the workers has gone to the 1st and 2nd floor for preparation of infloc solution, which is not disputed by the Respondent/Management. Further, the co-worker Sri Sankar who was on the spot has admitted his guilt and he prayed for apology for his action. Under such circumstances, the burden of proof that the Petitioner was negligent in the work and the Petitioner has left the work spot during working hours without permission is upon the Respondent/Management. But, it was not established by the Respondent/Management that the Petitioner was negligent or left the work spot during the working hours without permission. In this case, it is established that the Petitioner was in work spot on that date and he was preparing infloc solution for the clarifier section and it is also established that no permission is necessary to prepare infloc solution in the 1st and 2nd floor from the authorities. Under such circumstances, the findings given by the Enquiry Officer that the charge framed against the Petitioner was proved is without any substance and which is a perverse finding. It is further contended on behalf of the Petitioner that the Disciplinary Authority has also not applied his mind with regard to the evidence and also with regard to the contention of the Petitioner and therefore, imposition of punishment is also perverse. Since the charge has been falsified by the management witnesses themselves, who have deposed the fact that the Petitioner was engaged in 1st and 2nd floor for preparation of infloc solution, the contention of the Respondent that Petitioner went away from the work spot without permission is without any substance. The Respondent/Management has taken action against the Petitioner only on the ground that he was acting as Secretary in the labour union and only to victimize the Petitioner, they have taken this serious step and imposed the punishment of termination for no fault of his work.

12. I find much force in the contention of the learned counsel for the Petitioner because the Standing Order clause 21 which deals with Acts and Omissions which constitute misconduct, wherein sub-clause 15 says that "neglect of work or duty and leaving the work spot during working hours without permission" is a misconduct. Therefore, the Respondent/Management has to establish that the alleged over flown from LC10B tank with resulted in loss of 0.5 MT of liquor was caused only on the neglect of work or duty and in that incident, the Petitioner has left the work spot during working hours without permission. In this case, it is clearly established by the management witnesses that during the relevant time the Petitioner was engaged on the 1st and 2nd floor in preparation of infloc solution. It is not the case of the Respondent/Management that preparation of infloc solution was not necessary at that time and further, it is established before the domestic enquiry that infloc solution was utilized in the preparation of titanium dioxide by the management. Under such circumstances, it cannot be said that the Petitioner was neglect of work of duty and it cannot also be said that he has left the work spot during the working hours without permission. When the Respondent/Management has not established that even for preparation of infloc solution, the Petitioner has to obtain permission to leave from ground floor to 1st and 2nd floor from the authorities, I am not convinced that he was negligent and he left the work spot without permission. When the Petitioner has not left the work spot namely 1st and 2nd floor, which are also the

work spot, it cannot be said that he left the work spot without permission. Under such circumstances, I find there is a point in the contention of the Petitioner that only due to his union activities, the Respondent/Management has enraged and they wanted to take action against the Petitioner in one way or the other. Further, I find much force in the contention of the learned counsel for the Petitioner that when action was taken against two of the workers for the misconduct and one worker has admitted the guilt and prays for guilty and when the other has disputed the fact that he was not negligent and he was available in the work spot and he was doing the other work in connection with preparation of infloc solution, the Enquiry Officer has come to the conclusion that the charge framed against the Petitioner has been proved is without any substance and it only shows his perversity.

13. But, again the learned counsel for the Respondent contended that though one of the workers namely Mr. Sankar has admitted the guilt, it cannot be said that the Petitioner should be absolved from the misconduct. When both are liable for misconduct, the finding given by the Enquiry Officer is a correct one and under such circumstances, the punishment imposed by the Disciplinary Authority is also just and legal.

14. But, here again, I am not convinced with the contention of the Respondent because as I have already stated that the Respondent/Management has not established that the Petitioner was negligent and they have also not established the fact that he has left the work spot during the working hours without permission. Under such circumstances, I find the findings given by the Enquiry Officer is without any legal evidence and the imposition of punishment by the Disciplinary Authority is perverse.

15. Then the learned counsel for the Respondent contended that the Petitioner alleged victimization but it is well established by the judgement of Supreme Court and also High Court that if you punish a man for something, which he has himself done and the offence found to have been committed and the punishment awarded in respect of it are directly related to each other, there could not be any victimization. In this case, since it is established in the evidence before the domestic enquiry that the Petitioner has committed misconduct alleged against him, and the punishment imposed by the Respondent/Management in respect of it are directly related to each other, under such circumstances, it cannot be said that the Respondent/ Management has victimized the Petitioner.

16. But, here again, I am not inclined to accept the contention of the Respondent because, I find the charge framed against the Petitioner has not been proved and the finding given by the Enquiry Officer is without any legal evidence. Under such circumstances, I find this point against the Respondent/Management.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

17. In view of my foregoing findings that the dismissal of Petitioner from service by the Respondent/Management is not legal and justified, I find the Petitioner is entitled to the relief as prayed for. As such, I direct the Respondent/ Management to reinstate the Petitioner forthwith into service with full back wages and all attendant benefits. No Costs.

18. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th September, 2006).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

On either side : NONE

Documents Marked :

For the I Party/Petitioner :

Ex. No.	Date	Description
W1	09-03-04	Xerox copy of the charge memo issued to Petitioner
W2	14-03-04	Xerox copy of the explanation given by Petitioner
W3	18-03-04	Xerox copy of the suspension cum domestic enquiry order
W4	30-03-04	Xerox copy of the letter from Petitioner to Enquiry Officer
W5	09-03-04	Xerox copy of the basic report
W6	30-03-04	Xerox copy of the enquiry proceedings
W7	08-04-04	Xerox copy of the letter to Enquiry Officer
W8	23-04-04	Xerox copy of the letter from Petitioner to Enquiry Officer
W9	23-04-04	Xerox copy of the enquiry proceedings
W10	25-05-04	Xerox copy of the letter from Petitioner to Enquiry Officer
W11	07-06-04	Xerox copy of the letter from Enquiry Officer to Petitioner
W12	08-06-04	Xerox copy of the enquiry proceedings

W13	16-06-04	Xerox copy of the enquiry proceedings
W14	22-06-04	Xerox copy of the letter from Respondent to Petitioner
W15	25-06-04	Xerox copy of the letter from Respondent to Petitioner
W16	07-07-04	Xerox copy of the enquiry proceedings
W17	14-08-04	Xerox copy of the letter from Respondent/Management to Petitioner
W18	24-07-04	Xerox copy of the letter from Petitioner to Respondent
W19	27-07-04	Xerox copy of the enquiry proceedings
W20	10-08-04	Xerox copy of the enquiry proceedings
W21	10-08-04	Xerox copy of the deposition of Petitioner
W22	16-08-04	Xerox copy of the letter from Respondent to Petitioner
W23	24-08-04	Xerox copy of the enquiry proceedings
W24	06-09-04	Xerox copy of the written arguments of Petitioner
W25	29-09-04	Xerox copy of the 2nd show cause notice
W26	21-09-04	Xerox copy of the Enquiry Officer's report
W27	06-10-04	Xerox copy of the reply to 2nd show cause notice
W28	19-10-04	Xerox copy of the dismissal order
W29	11-01-05	Xerox copy of the 2A petition filed by Petitioner
W30	14-02-05	Xerox copy of the counter filed by Respondent to 2A petition
W31	09-04-05	Xerox copy of the counter filed by claimant
W32	12-05-05	Xerox copy of the rejoinder filed by Respondent
W33	13-06-05	Xerox copy of the counter to rejoinder

For the II Party/Management :

Ex. No.	Date	Description
M1	09-03-04	Xerox copy of the charge memo
M2	14-03-04	Xerox copy of the explanation given by Petitioner
M3	18-03-04	Xerox copy of the suspension issued to Petitioner
M4	30-03-04	Xerox copy of the enquiry proceedings
M5	21-09-04	Xerox copy of the Enquiry Officer's report
M6	29-09-04	Xerox copy of the 2nd show cause notice issued to Petitioner
M7	06-10-04	Xerox copy of the explanation given by Petitioner
M8	19-10-04	Xerox copy of the order of dismissal
M9	11-01-05	Xerox copy of the petition filed before Assistant Commissioner of Labour (Central)
M10	14-02-05	Xerox copy of the counter filed by management before Assistant Commissioner of Labour (Central)
M11	09-04-05	Xerox copy of the reply statement filed by Petitioner
M12	12-05-05	Xerox copy of the rejoinder submitted by Respondent
M13	13-06-05	Xerox copy of the rejoinder submitted by Petitioner

नई दिल्ली, 16 नवम्बर, 2006

का. आ. 4757.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोंकण रेलवे कारपो. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-II, मुम्बई के पंचाट (संदर्भ संख्या 2/94 आफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-41012/75/2001-आई आर (बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4757.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/94 of 2001) of the Central Government Industrial Tribunal/Labour Court No. II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Konkan Railway Corp. Ltd. and their workmen, which was received by the Central Government on 15-11-2006.

[No. L-41012/75/2001-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT:

A. A. Lad, Presiding Officer

Reference No. CGIT-2/94 of 2001

Employers in relation to the Management of Konkan Railway Corporation Ltd.

The Chief Engineer (South),
Konkan Railway Corporation Ltd.,
Ratnagiri (South) Railway Complex,
MIDC, Mirtole, Ratnagiri-415639

AND

Their Workmen

Shri Pravin Arvind Salvi,
Suyog Co-op. Housing Society Ltd.,
Plot No. 19, At Post : Kuvarbav,
Tal. & Distt. Ratnagiri.

APPEARANCE:

For the Employer : Mr. Ravindra S. Samant, Advocate

For the Workmen : Mr. Jaiprakash Sawant, Advocate

Date of reserving Award : 2nd August, 2006

Date of passing of Award : 9th October, 2006

AWARD

The Government of India, Ministry of Labour by its Order No. L-41012/75/2001-IR(B-I) dated 30th/31st July, 2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Chief Engineer (South), Konkan Railway Corporation Ltd., Ratnagiri in terminating the services of Shri Pravin Arvind Salvi, Watchman w.e.f. 30-6-1995 is legal and justified ? If not, to what relief the workman is entitled for ?"

2. To support the subject matter involved in the reference, 2nd Party, Workman filed Statement of Claim at Exhibit 7 stating and contending that, he was taken by 1st Party as a Watchman with effect from 5th May, 1994. He worked continuously on various duties like Watchman at Stores Department as well as he was looking after the work of receipt of the material and kept watch on the material kept at open yard store. It was a permanent type of work. Said work was done by him under the control of 1st Party. He was not getting any kind of leave Even there was no weekly holiday. Appointment was made @ Rs. 30 per day on monthly basis of 12 hours shift. Said amount was paid to the Workman in lump sum Rs. 900 by issuing cheque. Looking to the need of the Workman 1st Party exploited the Workman and was utilizing his services as per its desire and whims. No any facilities were availed to him. Despite all this with effect from 30th June, 1996, 1st Party refused to accept the services of the 2nd Party without following due process of law as required under Section 25(f) of the Industrial Disputes Act, 1947.

3. The 1st Party objected the said act of the decision of the 1st Party by approaching the officers of the 1st Party. However, no heed was given to his grievance. The case made out by the 1st Party of abandonment of the job by the 2nd Party with effect from 30th June, 1995 has no meaning. Workman is in need of work and question of abandonment of job does not arise. The decision taken by the 1st Party in preventing the 2nd Party from attending his work with effect from 30th June, 1995 is not legal and proper. So it is prayed that he be reinstated with benefit of back wages and continuity of service.

4. This prayer is disputed by the 1st Party by filing written statement at Exhibit 10 stating and contending that, 1st Party was engaged on the project of construction of Railway lines connecting Western India with Southern India. During the temporary phase of construction lines, the Corporation had engaged services of the employees like 2nd Party Workman on temporary basis for a temporary period. 2nd Party Workman was among them who was engaged on daily wages of Rs. 30 per month. He was aware of the nature of his appointment that, he was appointed temporarily and purely on daily wages. His name was not on the muster roll of the 1st Party. This Workman did not report on duty from 1st July, 1995 without assigning any reason. Even he did not send any message of his absenteeism as a result of which 1st Party's work suffered. Though oral message given by the 1st Party to the 2nd Party Workman, no heed was given to it. Even no steps were taken by him after 1-7-1995. This Workman contacted for the 1st time about its redressal by approaching on 15th January, 2001 to Assistant Labour Commissioner(C), Vasco Da Gama. There was a gap of 5 years. No reason was given by him, as to why he was that much late in approaching the Competent Authority for his grievances ? It itself reveals that, he slept over his rights since he was not interested in the work of the 1st Party and proves that he abandoned the job. It is stated that grievance of the 2nd Party about terminated of his services as alleged by the 2nd Party is not correct. This Workman abandoned the job and as such no question arises about considering his absenteeism as a termination and require to consider for any favour on him to direct the 1st Party to reinstate him with benefits of back wages and continuity of services.

5. In view of the above pleadings my Ld. Predecessor framed the Issues at Exhibit 12 which I answer as under :

Issues	Findings
1. Whether the reference suffers from delay and latches ?	Yes
2. Whether the management proves that workman abandoned his services voluntarily w.e.f. 1-6-95 ?	Yes
3. Whether the action of the management is legal and justified ?	Does not survive
4. What relief the workman is entitled to ?	Does not arise

REASONS

Issue Nos. 1 and 2 :

6. By filing Statement of Claim 2nd Party made out the case that, he was illegally prohibited from reporting on duty with effect from 30th June, 1995. His case is that without following due process of law he was prevented from attending his duties. Whereas the case of the 1st Party is that he abandoned the job, remained absent without explanation and intimation. Even he approached the Assistant Labour Commissioner after about 5 years. No explanation is given as to why he was late in approaching Assistant Labour Commissioner for redressal of his grievances.

7. To support that 2nd Party examined himself at Exhibit 17 by filing affidavit. His cross was taken by the 1st Party's Advocate. In examination-in-chief he reiterated his story as referred above. However, in the cross he states that, no appointment order was given by 1st Party. He was engaged on 5th May, 1994. He states that he was aware of the nature of work which was temporary and for temporary period. He states that, he received wages of his work. He states that, he has no documentary evidence to show that, he worked for 12 hours per day. He states that, he did not complaint about overtime work got done from him. He admits that, he has not applied in writing about his willingness to work. He admits that, for the first time he approached Goa Assistant Labour Commissioner (C) in January, 2001. He admits that he has agricultural land.

8. After recording evidence closing purshis was filed by him at Exhibit 18. In reply 1st Party examined one B. B. Nikam by filing his affidavit at Exhibit 20 who made out the case of abandonment of job by 2nd Party and states that, without intimation 2nd Party remained absent from his work. In the cross he states that Workman was paid by the management and though oral message was sent by it vide M. S. Vaikol, Supervisor he did not report for duty. No written memo was given to the Workman reminding him to attend the work. The evidence was closed by the 1st Party by filing closing purshis at Exhibit 21.

9. Thereafter both submitted written arguments i.e. by 2nd Party at Exhibit 23 and by the 1st Party at Exhibit 25. Besides, 2nd Party placed reliance on the copy of the citations published in 2006 I CLR page 559 (Telecom District Manager, Vaisad *Vs.* Namlabhai Ranchhodbhai Patel) to show that even if the Workman is appointed on daily wages such cannot be terminated without following due process of law. Another copy of citation published in 2005 II CLR page 952 (Bhimrao Rambhau Abhang *Vs.* Kohinoor Engineering Company) is on the point of the abandonment of job.where Hon'ble High Court observed that :

> "finding of abandonment of service is palpably erroneous termination of services could not be proved to have been effected by following due process of law, and even if there was voluntary abandonment of service, principles of natural justice were required to be complied with as in the cases of Robert D' Souza 1982 I LLJ 330 and D.K. Yadav 1993 II LLJ p. 696."

10. Even it is a matter of record that 2nd Party came to be appointed temporarily and that he worked on daily wages. It is a matter of record that he did not report on duty from 30th June, 1995. There is no evidence brought on record by 2nd Party to show that, he approached the 1st Party with a request to take him in the employment but he was refused. On the contrary case made out by the 1st Party that, for the first time he approached Goa Assistant Labour Commissioner in January, 2001 regarding his alleged termination dated 30th June, 1995. It is to be noted that till then he has not disputed, though he tried to make out a case that he approached the 1st Party but no heed was given to his demand. When specific case is made out by the 1st Party that, 2nd Party abandoned his job from 30th June, 1995 and for the first time he approached Assistant Labour Commissioner at Goa on 15th January, 2001, question arises whether really 2nd Party is interested or was interested in the employment ? It is a matter of record that, work was of temporary nature. It is brought on record that, 2nd Party was aware of it. If we count the service period of the 2nd Party we find that, he worked totally from 5th May, 1994 to 30th June, 1995. Besides, vital admission brought on record by the 1st Party that 2nd Party that he has agricultural land is to consider. Besides, it is also brought on record that, 2nd Party did not approach it after 30th June, 1995. Even it is also brought on record that, he tried to contact 1st Party but no heed was given to his demand without any consideration.

11. When there was temporary work and 2nd Party worked on the daily wages and when case made out by the 1st Party is that he did not report on duty from 30th June, 1995 question arises, can it be said that he was interested in the employment and 1st Party has terminated his employment ? On the contrary it is the case of the 1st Party that, he has abandoned the job.

12. The case laws referred by the 2nd Party's Advocate as referred above published in 2006 I CLR page 559 (Telecom District Manager, Vaisad *Vs.* Namlabhai Ranchhodbhai Patel) reveals that, in the said case all the employees involved in that case were engaged by the employers on daily wages at Vapi as happened in the case of the present workman. It was also casual type of work as case made out by the 1st Party in the case of this Workman. They were not called for work since the work was not available on which dispute was raised by the said Workman before Assistant Labour Commissioner, Central Government. There were considerable proceedings where both agreed that, workman will be allowed to work casually on the same site as casual worker on the basis of availability of the work in the locality at Vapi and Management will inform the Workman in writing accordingly. Thereafter, in the year 1995 some work of casual nature was available, as per agreement which had taken place between them, 1st Party intimated workman by letter dated 24th April, 1995 to attend the work at Vapi. However, workman did not report and did not attend the work and approached the Assistant Labour Commissioner by raising industrial dispute. After reference Surat Tribunal determined the subject matter referred in the reference and observed denying work was illegal. Said was challenged before Hon'ble Gujarat High Court in which it was observed that, action taken by the employer was not legal. However, facts of this case are different than the facts of case (supra). There was some agreement before Assistant Labour Commissioner which was held not legal by the Surat Industrial Tribunal on the basis of that, reference was allowed and observed that, since there the work and the workman involved in the reference was purposely denied. In our case admittedly work given to the 2nd Party was of temporary nature. Admittedly 2nd Party did not approach in time as happened in the above referred case. He waited for 5 years. It has not shown that, work was available with the 1st Party and other employees are taken in his place. No explanation is given as to why he was late in approaching the Assistant Labour Commissioner after 5 years ? All this reveals that, ratio laid down in the above referred case supra does not help present 2nd Party Workman in any manner.

13. Another copy of citation refetred 2005 II CLR page 952 (Bhimrao Rambhau Abhang *Vs.* Kohinoor Engineering Company) on the point of the abandonment of job where it was observed that, finding of abandonment of service is palpably erroneous. If we peruse the facts of that case we find that, the said workman was working with the Company, a partnership firm, since June, 1961 as a Helper and subsequently he was appointed as Watchman and on 8-4-1983 the employers had lodged a Police complaint regarding theft of certain articles on its premises and there was apprehension that workman be detained in Jail on alleged theft and on the next day he was called in the Cabin and was asked to submit resignation if he wants to save the arrest. On 10th April, 1983 when he reported on duty he was not allowed to work. He, therefore, approached the Assistant Labour Commissioner and as there was no response from the employer, failure report came to be submitted and the dispute was referred for adjudication to the Labour Court where defence of the employer was that, it has not terminated the employment of the workman but the Workman on his own has abandoned the work and that the case was made out after passing ex-parte order in favour of the workman. Before us, case is different. The Workman before us did not approach the employers as happened in the case of Bhimrao Rambhau Abhang as referred above. Even he did not agitate the grievance at the proper time. In the above referred case, Bhimrao Rambhau Abhang approached the Management on the very next day and demanded the work, that time work was not provided but this Workman did not approach at all and for the first time contacted to Goa Assistant Labour Commissioner which he do not denies.

14. So, if we consider the case law referred by the 2nd Party Workman and case made out by both, I conclude that, 2nd Party has not explained as to why he was late in filing the reference. He has not explained as to why he did not report from 30th June, 1995 till January, 2001 and why it should not be treated as abandonment of job ? Considering this and the discussions made above I conclude that, delay comes in the way of the 2nd Party and management proved that, the 2nd Party has abandoned the job. So I answer this issue to that effect.

Issue Nos. 3 & 4 :

15. When the 2nd Party is unable to prove that his demand is true and require to consider and when 1st Party proved that, 2nd Party abandoned the job and was appointed on temporary basis and when no action was taken by the 1st Party of any type, question does not arise to justify the action of the management and claim of the 2nd Party. So I answer these issues to that effect.

16. In view of the above discussions, I conclude that the reference requires to be dismissed with no order as to its costs. Hence, the order :

ORDER

Reference is dismissed with no Order as to its costs.

Mumbai, A.A.LAD, Presiding Officer
Dated the 9th October, 2006.

नई दिल्ली, 16 नवम्बर, 2006

का.आ 4758.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 7/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/142/2005-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4758.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID-7/2006) of the Central Government Industrial Tribunal/Labour, Court Chennai now as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 15-11-2006.

[No. L-12012/142/2005-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 7th August, 2006

Present :

K. JAYARAMAN : Presiding Officer

Industrial Dispute No. 7/2006

(In the matter of the dispute for adjudication under clause (d) of sub-section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri M. Sivaraman : I Party/Petitioner

AND

The Assistant General Manager (Region I) State Bank of India, Z.O. Madurai : II Party/Management

APPEARANCE

For the Petitioner : Party in person

For the Management : M/s K. Chandrasekaran & T.N. Sivakumar, Authorised Representatives

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/142/2005-IR (B-I) dated 12-01-2006 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows:-

"Whether (i) the claim of Shri M. Sivaraman against the management of State Bank of India, Madurai for payment of difference of subsistence allowance as per the wage revision 6th Bipartite Settlement dated 14-2-95 given effect from 1-11-92 for the period from 1-11-92 to 28-1-93 with penal interest is legal and justified? (ii) the claim of Shri M. Sivaraman against the management of State Bank of India, Madurai for payment of penal interest for the delayed payment of subsistence allowance which is due to be paid on January, 2003 paid only on 29-6-2004 is legal and justified? If not to what relief the workman is entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 7/2006 and notices were issued to both the parties and I party entered appearance in person and filed Claim Statement and the II Party/Management entered appearance through their authorised representatives and filed their Counter Statement.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:-

The Petitioner was an employee under Respondent/Management and he was terminated without notice by the Respondent/Management on 28-1-93. His subsistence allowance was paid only up to 31-12-92 and the subsistence allowance payable for the month of January, 1993 for 28 days up to the date of termination was not paid in spite of his letter dated 1-3-93 requesting payment for the same. But, subsequently, on the basis of his letter dated 17-5-2004 salary of 28 days for the month of January 1993 was paid without interest on 29-6-2004. The Petitioner is claiming interest for the said amount. Further, wage revision settlement was arrived at on 14-2-95 and wages revised and paid w.e.f. 1-11-92 retrospectively for all the employees. But the same was not paid to the Petitioner for November& December, 1992 and January, 1993 for 28 days i.e. upto 28-1-1993 during which period, he was in the employment of the bank under suspension. The Petitioner requested in several letters that revised amount along with interest from the period of 1-11-92 to till date, but they have not given any proper reply, Hence, the Petitioner raised this dispute before Assistant Labour Commissioner (Central) and subsequently, on the failure of conciliation, the matter was referred to this Tribunal. Hence, for all these reasons, the Petitioner prays an award in his favour.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner joined the services of Respondent/Bank in the year 1966 as cashier. He has committed misconduct, when he was working at Madurai city and disciplinary proceedings were initiated against him. In the domestic enquiry, charges have held as proved against him and the Disciplinary Authority imposed the punishment of dismissal without notice on 28-1-93. No doubt, the Petitioner was under suspension from 18-9-89

to 28-1-93, but the Petitioner is not eligible for subsistence allowance claimed for the period November & December, 1992 and January, 1993 due to wage revision as per bank's extant instructions. Hence, the payment of interest also does not arise at all. Regarding payment of subsistence allowance for the month of January, 1993 it was sent to his last known address by banker's cheque and the same was returned as undelivered. Subsequently the payment was made to him after knowing his whereabouts. As such, the Respondent/Bank is not liable for interest as claimed by the Petitioner. As per VI Bipartite Settlement in case of workman under suspension is prior to the date of salary revision, there will be no change in subsistence allowance arising out of salary revision and accordingly, no arrears will be payable unless the period of suspension is treated on duty. In this case, the Petitioner was suspended on 18-9-89 and finally dismissed from service on 28-1-93 and as his suspension was prior to wage revision namely VI Bipartite Settlement, he was found ineligible for revised salary arrears. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5 In these circumstances, the points for my consideration are-

(i) "Whether the Petitioner's claim for difference of subsistence allowance as per wage revision of VI Bipartite Settlement dated 14-2-95 with penal interest is legal and justified?

(ii) Whether the claim of the Petitioner against the Respondent/Management for payment of penal interest for the delayed payment of subsistence allowance which is due to be paid on January, 2003 but paid only on 29-6-2004 is legal and Justified?

(iii) To what relief the Petitioner is entitled?"

Point Nos.1& 2:-

6. The admitted facts in this case are that the Petitioner joined the services of the Respondent/ Management as cashier on 4-8-66 and for his misconduct, disciplinary proceedings was initiated against him and for the misconduct, he was suspended from 18-9-89 and the Disciplinary Authority imposed the punishment of dismissal without any notice on 28-1-93. Thus, he was under suspension from 18-9-89 to 28-1-93. In the mean time, VI Bipartite Settlement was entered into on 14-2-95 and thus wages of the employees of the bank were revised and paid w.e.f. 1-11-1992 retrospectively. The petitioner in this dispute is claiming interest on delayed payment of subsistence allowance for 28 days namely 1st January, 1993 to 28-1-1993 paid on 29-6-2004 and also revised subsistence allowance as per wage revision of VI Bipartite Settlement and also for the interest for delayed payment.

7. But, on behalf of the Respondent with regard to delayed payment of subsistence allowance namely for the month of January, 1993 it is alleged that subsistence allowance for 28 days was sent to the Petitioner to his last known address by means of banker's cheque and the same was returned undelievered and payment for these 28 days was made to him after knowing his whereabouts on the changed address and as such, the Respondent/Bank is not liable for interest for the delayed payment. With regard to revised subsistence allowance with interest, the Respondent/Bank contended that as per Bipartite Settlement and the circular issued by the Respondent/ Bank, since the Petitioner who was under suspension and since in the final order, his suspension period was not treated as on duty, he is not entitled to claim the revised subsistence allowance nor entitled to claim interest for the alleged revised subsistence allowance.

8. The Petitioner examined himself as WW1 and four documents Ex. W1 to W4 namely copy of bank's circular on interest rate applicable for belated payment of gratuity as Ex. W1, Xerox copy of the SBI codified circular issued by PBG department as Ex. W2, copy of notice and order to pay gratuity dated 30-9-2004 by Assistant Labour Commissioner (Central) as Ex. W3 and copy of the order of RLC namely Appellate Authority in the matter of gratuity as Ex. W4. As against this, Respondent marked copy of wage revision of V Bipartite Settlement for award staff dated 10-4-89 as Ex. M1 and copy of wage revision of VI Bipartite Settlement for award staff dated 14-2-95 as Ex. M2.

9. The Petitioner in his written argument contended that denying the payment of interest on the subsistence allowance payable for the month of January, 1993 paid after a delay of eleven years is unfair and against the cannons of justice. Though they alleged that they have sent subsistence allowance for the month of January, 1993 by a bankers' cheque to his last known address and was reported undelivered was not established before this Tribunal with any satisfactory evidence. Even in the notice dated 1-3-93, the Petitioner has claimed his arrears of subsistence allowance for the month of January, 1993, but it was not sent immediately by the Responded/Bank nor given any satisfactory reply for not sending arrears of subsistence allowance and it was paid only in the year 2004 i.e. on 29-6-2004 which is eleven years after the due date. Under such circumstances, the Petitioner is entitled to claim interest for the delayed payment. Further regarding revision of subsistence allowance as per VI Bipartite Settlement, though the Respondent relied on circular dated 5-5-95, and 5-5-95 circular has not formed part of VI Bipartite Settlement and it is only a circular issued by Respondent/ Bank and therefore, it cannot be said by this circular, the Petitioner is not entitled to claim revised subsistence allowance. As per the circular, it is only suggested that arrears of wage revision need not be considered to suspended employee. But, on a careful reading para 4 clearly establishes the fact that revision is effective, the concerned employee will be given salary revision on the due date and his subsistence allowance will be fixed as per revised salary and further it is stated that arrears of salary and subsistence allowance shall be paid to them accordingly, which means

that suspended employees is not being totally taken away from the purview of wage revision. The beginning of para 4 makes only an exception towards payment of arrears on wage revision to those employees whose suspension period was treated as 'not on duty'. Since the Petitioner has been paid with full subsistence allowance for all the three months namely November and December, 1992 and January, 1993, the period cannot be treated as not on duty and no order treating this Period of three months alone as 'not on duty' was served on the petitioner. Therefore, he is entitled to the revision of subsistence allowance and hence, the Petitioner contended that he is entitled the amount claimed by him for revised arrears of subsistence allowance and also interest for the said amount.

10. But, as against this, representative of the Respondent/Bank contended that the Petitioner cannot contend that circular issued by the bank will not be binding on him. Staff Circular No. 3/95 which forms part of Bipartite Settlement, in which it is clearly stated that "as advised in staff circular No. 12 (90-91) dated 9-7-90 in respect of workmen employees under suspension prior to wage revision, there will be no change in the subsistence allowance arising out of salary revision and accordingly, no arrears will be payable due to the salary revision, unless the period of suspension is treated as on duty." In this case, it is an admitted fact that the petitioner was suspended from 18-9-89 to 28-1-93 and even in the final order, this suspension period has not been treated as on duty. Under such circumstances, the petitioner is not entitled to the claim of revised subsistence allowance and only 2nd part of para 4 of circular says if the date of suspension is subsequently to date from which the salary revision is effective, the concerned employee will be given salary revision on the due date and his subsistence allowance will be fixed as per revised salary. But, in this case, it is not the case of the Petitioner that suspension was subsequent to salary revision. Under such circumstances, he cannot take advantage of later part of para 4 of the circular. Further, even in the notice dated 17-5-2004 the Petitioner has admitted that he came to know that arrears of subsistence allowance sent by bankers' cheque to his last known address and it was returned. Further, he requested the bank to send the returned banker's cheque with an invalidated cheque. Under such circumstances, it is not valid to contend that the bank has not paid the arrears of subsistence allowance namely for the month of January, 1993 to him. Further, it is not the case of the Petitioner that he has given the changed address to the Respondent/ Bank to send communication and also arrears. Under such circumstances, the Petitioner is not entitled to claim any amount from the Respondent/Bank. He further contended that this claim of the petitioner cannot also be made at this belated stage even if the provisions of Limitation Act are not applicable to the proceedings before this Tribunal. In this case, it is an admitted fact that VI Bipartite Settlement was entered into on 14-2-1995 giving retrospective effect from 1-11-1992 and the Petitioner has not stated for what reason for all these years, he has not made any claim with regard to his alleged revision. He also relied on the rulings reported in 1997 LAB IC 807 Smt. Tara Devi Vs. Mukhya Chikitsa Adhikari, Hamirpur & Another wherein the Allahabad High Court relying on the judgement of Supreme Court has held that *"party must approach the Court within a reasonable time"* and it further held that "Petition cannot been entertained at a belated stage even if provisions of Limitation Act are not applicable to Writ proceedings." The next rulings relied on by the representative for the Respondent is reported in 1997 LAB IC 1124 Chandra Kishore Singh Vs. State of Bihar wherein the Patna High Court has held that "merger of cadre of Sub-Deputy Collector with Deputy Collector challenged after lapse of 11 years and the Petitioner has not given any explanation for the said delay and therefore also that petition is barred by laches." Relying on these decisions, representative for the Respondent contended that even assuming for argument sake without conceding that the Petitioner is entitled for revised subsistence allowance, he has not given any valid explanation for not raising this dispute even after VI Bipartite Settlement namely on 14-2-1995. Under such circumstances, his claim for revised subsistence allowance and also interest for delayed payment is barred by laches on his part and also by delay. Under such circumstances, in any case, the Petitioner is not entitled to claim this amount.

11. I find much force in the contention of the representative for the Respondent because, the Petitioner has not given any explanation for the long delay namely nine years. Further, as I have already pointed out as per the VI Bipartite Settlement and also the circular issued by Respondent/Bank, since the Petitioner was suspended even prior to revision, he is not entitled to revised subsistence allowance. Since he is not entitled to revised subsistence allowance, I find, he is also not entitled to the interest claimed by him. With regard to payment of subsistence allowance for the month of January, 1993 it is not the case of the Petitioner that he has given his change of address to the Respondent/Bank. Under such circumstances, I find much force in the contention of the representative for the Respondent. Therefore, I find both these points against the Petitioner.

Point No. 3 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

12. In view of my foregoing findings, I find the Petitioner is not entitled to any relief. No Costs.

13. Thus, the reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner : WW 1 Sri M. Sivaraman

For the II Party/Management : None

Documents Marked :—

For the II Party/Claimant :—

Ex. No.	Date	Description
W 1	Nil	Xerox copy of circular of the Respondent/Bank on interest Rate applicable for belated payments.
W 2	Nil	Xerox copy of the codified circular issued by Respondent PBG department, Mumbai.
W 3	30-09-04	Xerox copy of the notice & order to pay gratuity issued by Assistant Labour Commissioner (Central)
W 4	29-04-05	Xerox copy of the letter from RLC to Petitioner regarding decision of Appellate Authority in GA No. 15/2005

For the II Party/Management :—

Ex. No.	Date	Description
M 1	09-07-90	Xerox copy of the V Bipartite Settlement for wage revision Dated 10-4-89.
M 2	5-5-95	Xerox copy of the VI Bipartite Settlement for wage revision Dated 14-02-95.

नई दिल्ली, 16 नवम्बर, 2006

का.आ 4759.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-II, नई दिल्ली के पंचाट (संदर्भ संख्या आई डी-153/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/116/2004-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4759.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID-153/2004) of the Central Government Industrial Tribunal/Labour, Court No. II, New Delhi now as shown in the Annexure in the industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 15-11-2006.

[No. L-12012/116/2004-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, II NEW DELHI

PRESENT:

R.N. Rai, Presiding Officer

Industrial Dispute No. 153/2004

In the matter of :—

Shri Akash Lal,
S/o. Shri Prem Lal,
R/o. EE-2457,
Jahangirpur,
New Delhi-110033.

Versus

The Dy. General Manager,
State Bank of India,
Main Branch Parliament Street,
New Delhi-110001.

AWARD

The Ministry of Labour by its letter No. L-12012/116/2004-IR (B-I) Central Government dt. 20-08-2004 has referred the following point for adjudication. The point runs as hereunder:

> "Whether the action of the management of State Bank of India in regard to terminating the services of Shri Akash Lal, Ex. Clerk-cum-Typist by treating to have voluntary abandoned the bank's service w.e.f. 22-10-1990 is just, fair and legal? If not, to what relief the workman is entitled to.?"

The workman applicant has filed claim statement. In the claim statement it has been stated that the aforesaid workman was appointed as Typist cum Clerk on 15-04-1983 by the aforesaid management and was posted in Account Department by the management vide letter No.PER/SKD/83/527 dated 12-11-1983 and after having completed his probation period successfully, the services of the workman was confirmed vide letter No. PER/SKD/84/609 dated 16-02-1984 w.e.f. 28-10-2003 under the applicable scale, and since his appointment the workman had been discharging his duties with full of honesty, sincerity, laboriously and devotions and to the entire satisfaction of his senior officers and the workman never gave any opportunity of complaint of the nature whatsoever to the management hence the workman had an unblemished record of service to his credit.

That unfortunately the father of the workman Shri Prem Lal expired on 10-11-1988 and subsequently his uncle Shri Roop Lal also expired within a period of one year i.e. 20-09-1989 and on 03-10-1989 the workman proceeded on a one day casual leave in order to conduct the Shrad of one of his relative and during the process of the ritual and customs on the day, the workman felt a headache and realized that gradually he is leaving his memory and felt uneasy, thereafter the family members of the workman took

him to the Doctor for further treatment. But even after taking the treatment from the doctor, there was no improvement and the memory of the workman kept on fading and the workman reached to the stage of mentally retarded person, and the attending doctor advised the family members of the workman to consult a psychiatrist, then a local psychiatrist was also consulted that there was no improvement as regard to the memory of the workman. On this, one of the friend of the workman advised the family members of the workman to consult Dr. B.P. Sinha at Ranchi for the proper treatment and the workman as per the advise was lifted to Ranchi and hence he remained under the treatment of the said Doctor at his Clinic i.e. Sinha Mental Health Centre.

That after having cured from his mental illness, the workman came back to Delhi and approached his employer to join his duties, but no proper and satisfactory reply was given by the management and hence the workman made a representation to the management prayed therein for his reinstatement in service, and in response thereof a letter dated 15.03.1993 was received by the workman in which the management stated that "You were treated to have voluntarily abandoned the bank's services w.e.f. 22-10-1990". Thereafter workman again wrote a letter on 13-04-1993 addresse to the Chairman, State Bank of India through the Manager personal, SBI, Main Branch, New Delhi for his reinstatement, but no satisfactory reply was given by the management.

That the workman represented his case to the different authorities of the bank on the different dates but nothing came out. The workman also requested the Hon'ble Union Minister, Minister of Finance and also approached the Banking Division of the Ministry, but the bank did not hear the requests of the workman and kept on emphasizing and pressuring the workman for receiving his dues which were lying with the bank.

That the workman sought shelter and explained his grievance to one Member of Parliament namely Shri Swaroop Upadhyay, who wrote a letter to Shri Abrar Ahmed, the then Hon'ble Minister of State for Finance, Govt. of India and requested the Hon'ble Minister to look into the matter personally on the humanitarian ground as the workman belongs to a poor family. Thereafter the workman received a letter from the management bearing No.PER/PKS/94/1467 dated 15.11.1994, thereby the workman was directed to produce the relevant certificates regarding his illness and also to furnish the details of the family members and their ages and also as regard to their employment status and in compliance of the said letter, the workman supplied the requisite information and his medical certificates to the Manager Personal, SBI, Main Branch, New Delhi on 22-11-1994.

That when the matter was under consideration, the mother of the workman also expired on 07-02-1995 in Hindu Rao Hospital after a long ailment as she could not be looked after and treated properly due to the financial hardships of the family.

That the workman felt a sigh of relief when he was called and thoroughly examined by the Manager Personal, SBI, Main Branch, New Delhi, Shri I.C. Jain in his Chamber on 04-04-1995 and after being satisfied he assured the workman that he will receive something positive from the bank very soon and his case being considered sympathetically. It is pertinent to mention here that during the course of examination, the Ld. Manager Personal also asked the workman as whether he can accept the fresh appointment, which was duly conceded to by the workman as he was in the need of the employment at any cost, since his family was at the stage of starvation, but even after the assurances the workman received nothing and sent number of reminders of his requests.

That the workman again sent a request to the management and in response thereof received a letter bearing No. NBER/ICJ/96/239 dated 25-04-1996 in which the management had clearly stated that "with reference to your letter dated 10.04.1996 we advise having already referred your case to our local Head Office, New Delhi from whom the advises are awaited in the matter and shall revert on the subject on hearing from them" and since then the workman was waiting for something positive from the management but all in vain.

That the workman being aggrieved by the apathy and inactiveness of the management filed a complaint petition to the Conciliation Officer/RLC(C) on dated 24-09-2003, where from the present reference has been forwarded to this Hon'ble Court, again the illegal termination of the services of the workman by the management, which was duly contested and replied by the management and the said authority has forwarded the present reference to this Hon 'ble Court.

That the workman also served a demand notice on management to this effect. That the management had acted in the gross violation of the principle of natural justice and management did not follow the due procedure of law before terminating the services of the workman as before terminating the services of the workman, management neither served any notice nor conducted any inquiry, however, it is submitted that the past practice of the management has been antilabour and the present act is also the outcome of unfair labour practice and malafide intention on the part of the management and treating the present workman as he himself has abandoned the services of the management, is an illegal and arbitrary act of the management and which is not tenable in the eyes of law as being one sided as the workman was not served any notice before taking any adverse action against the workman by the management and the management knowingly and malafidely kept on sending the notices on the wrong address, however, the correct and right address was ever available with the management.

That after the termination of his services, workman has been facing financial hardship and mental agony because of the illegal, unjustified and arbitrary act of the

management which has put the workman into the dark well of unemployment for no fault of the workman.

The respondent/management has filed written statement. In the written statement it has been stated that the claimant is guilty of delay and laches. After a delay of 13 years, the claimant has raised the industrial dispute. Due to such un-reasonable delay, non-vigilant attitude, the right, if any, stood extinguished to raise the purported industrial dispute. On this ground along the reference is liable to be rejected. Without prejudice to the above submissions, the parawise submissions are:

That the claimant was appointed as Typist/Clerk on 15-04-1983. He was a permanent employee. It is however wrong and denied that he was discharging his duties with honesty and sincerity. He remained unauthorisedly absent from 03-10-1989. No leave application was submitted by him. He never cared to report for duty, nor responded to the Notices/Letter dated 21-07-1990 and 01-08-1990 whereby he was directed to report for duties within 30 days. He never complied with directions given in these Notices/Letters. Hence he was treated to have voluntarily retired from the services of the bank by order dated 22-10-1990. The Notices and order dated 22-10-1990 were issued/passed by Dy. General Manager of the Bank.

That the contents of para 2 of the claim are wrong and denied for want of knowledge. He be put to strict proof thereof. It is further submitted that the claimant lost his memory and was under going treatment for psychiatric problems. These allegations are an after thought and are the produced of figment of imagination. Hence, they are devoid of truth and merits.

That the contents of para 3 of the claim are wrong and denied. The allegations are also vague, bald and with any material particulars.

Hence the allegations are denied. The fact remains that the claimant had no intention to remain in the employment of the bank as is evident from his conduct. Hence he was treated to have voluntarily retired from the services of the bank by order dated 22-10-1989 in terms of clause XVII of the BPS. The letter dated 15-03-1993 alleged to have been sent is of no significance, as he was already treated to have voluntarily retired from the services of the bank vide order dated 22-10-1990.

That the contents of para 4 are wrong and denied. The correspondence, if any made other authorities or to the Bank are of no use and significance. The allegation of unfair labour practice and victimization are wrong and denied. These allegations are baseless and are an after thought.

That the contents of para 5 of the claim are wrong and denied for want of knowledge. The claimant was treated to have voluntarily retired vide order dated 22-10-1990, as he had no intention of remaining in the employment. The claimant did not report duty within 30 days from the date of 30 days notice, nor he ever submitted any explanation explaining his unauthorized absence from duty. From conduct of the claimant it is clear that he was not interested in the service and had no intention of joining duty. The correspondence he made subsequently to his voluntarily retirements are of no significance and are extraneous.

That the contents of para 6 are wrong and denied for want of knowledge. In any event, these allegations are of no relevance and significance.

That the contents of para 7 are wrong and denied. No assurance given by the Officer of the Bank to the claimant. It is also wrong and denied that the claimant was asked about accepting the fresh appointment. The bank being a Public Sector financial institution cannot bye-pass Recruitment Rules. Hence the allegation, as made in this para are wrong and denied being cooked up and an afterthought.

That the contents of para 9 are wrong and denied except the initiation of conciliation. The conciliation proceedings and the reference are matters of records. However, it is submitted that purported industrial dispute is devoid of any merit.

That the contents of para 11 of the claim are wrong and denied being misconceived. The violation of principle of natural justice is misconceived. The claimant was called upon to report for duties within 30 days vide notices dated 21-07-1990 and 01.08.1990. He can therefore have no grievance in this regard. The allegations of unfair labour practice is baseless and devoid of any truth and merit.

The action of the bank in passing order dated 22.10.1990 is legal and justified.

That the contents of para 12 are wrong and denied. The action of the bank's legal and valid. It is therefore, prayed that the Hon'ble Tribunal may be pleased to pass award holding that the claim is liable to be rejected, in view of the submissions made in this written statement and further hold that the claimant is not entitled to any relief.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

It was submitted from the side of the workman that he was employed w.e.f. 15.04.1983 by the management. The father of the workman unfortunately expired on 10-11-1998 and subsequently his uncle Shri Roop Lal also expired within a period of one year i.e. 20-09-1989. The workman proceeded on one day casual leave on 13.10.1989 in order to conduct the Shrad of one of his relative and during the process of the ritual and customs on the day the workman felt headache and he realized that he his leaving his memory and felt un-easy. The members of his family took him to Dr. for further treatment. There was no

improvement. He was advised to consult physctrist. Still he did not improve and he was advised to consult Dr. B.P. Sinha for proper treatment. The workman remained under the treatment of that Doctor. After having been cured from the mental illness the workman came to Delhi and approached his employer to join his duty but no satisfactory reply was given. He was told by the bank that he has been treated as voluntary abandoned the bank service w.e.f. 22-10-1990.

It was submitted from the side of the management that the workman has raised this industrial dispute after delay of 13 years. His rights stood extinguished to raise this purported industrial dispute. The workman remained unauthorisedly absent from 30-10-1989. No leave application was submitted by him. He never cared to report for duty. He was directed to report for duties within 30 days by registered letter dated 01-08-1990. He neither reported for duty nor gave satisfactory explanation. The Bank passed the order of voluntary retirement on 22-10-1990.

It was submitted that the workman has intention not to join duties as is evident from his conduct. The workman has filed treatment slips of Dr. B.P. Sinha. Dr. B.P. Sinha has certified that he was under his treatment from 11-10-1990 to 6-02-1993. He was suffering from mental disorder. This certificate has been issued to the workman on 6-02-1993. Besides these two certificates nothing else has been filed.

It was submitted from the side of the management that such certificates can be procured from Medical Doctors. He was in mental disorder for almost three years but he has not filed any receipt of purchase of any medicine. If it is supposed that he was mentally ill his relative should have responded to 30 days notice of the bank. There is no correspondence from the side of the workman.

It was submitted that he was engaged somewhere else and he approached the management after his disengagement on concocted and forged medical certificates. It does not appear to be natural that the relatives of the workman will not respond to the notices of the bank. The workman in case was under mental ailment, his relative should have sent information regarding the same. The members of his family took him to several Doctors for treatment of his mental ailment but they did not bother to inform regarding the illness of the workman. The workman was not really ill. He was gainfully employed somewhere else and on his disengagement he has approached the bank. The workman has not proved that he was mentally ill during the period mentioned in the certificate.

It has been held in 2001 - I - LLJ page 174 that in case an employee defaulted in not offering explanation for unauthorized absence from duty nor place any material to prove that he reported to duty within 30 days of notice as required in terms of BPS. There is agreement as to the manner in which situation should be dealt with.

It is not the case of the workman that he did not receive registered notice sent to him. It implies that the workman was in knowledge of the notice but he kept silent impliedly and with an intention not to resume his work. The management has acted fairly in view of clause 17 of the Vth BPS. No interference is required.

The reference is replied thus :

The action of the management of State Bank of India in regard to terminating the services of Shri Akash Lal, Ex.Clerk-cum-Typist by treating to have voluntary abandoned the bank's service w.e.f. 22-10-1990 is just, fair and legal. The workman applicant is not entitled to get any relief as prayed for.

Award is given accordingly.

Date : 8.11.2006. R. N. RAI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4760.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गुडगांव ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-II, नई दिल्ली के पंचाट (संदर्भ संख्या आई डी-19/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-12011/53/1999-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4760.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID-19/2001) of the Central Government Industrial Tribunal/Labour Court, No. II, New Delhi now as shown in the Annexure in the industrial Dispute between the employers in relation to the management of Gurgaon Gramin Bank and their workmen, which was received by the Central Government on 15-11-2006.

[No. L-12011/53/1999-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

PRESENT :

Presiding Officer : R.N. Rai.

Industrial Dispute No. 19/2001

In the matter of :—

The General Secretary,
Gurgaon Gramin Bank Workers' Organization,
731, Adarsh Nagar, Rewari,
Haryana.

VERSUS

1. The Chairman,
   Gurgaon Gramin Bank,
   Head Office Gurgaon,
   H.No.2069, Gurgaon.

2. The Secretary,
Banking Division,
Ministry of Finance,
New Delhi - 110001.

3. The Chairman,
Syndicate Bank,
Head Office Manipal,
Post Box No. 1,
Karnataka - 576 119.

AWARD

The Ministry of Labour by its letter No. L-12011/53/99/IR (B-1) Central Government dt. 20-01-2000 has referred the following point for adjudication.

The point runs as hereunder:

"Whether the management of Gurgaon Gramin Bank has scrupulously followed and implemented orders concerning payment of overtime allowance to its Drivers? If not, what directions are necessary in the matter."

The workman applicants have filed claim statement. In the claim statement it has been stated that Shri Ramphal and Shri Satish Prakash are working as a Driver in Head Office Gurgaon under the kind control of the respondents. That in view of the directions issued by the Hon'ble Supreme Court, National Industrial Tribunal award dated 22-02-1991 was implemented over the bank employees. It is respectfully submitted that the award was made applicable w.e.f. 01-09-1987.

That in the award special allowance was also given to the employees of the bank and over time allowance was also given to the drivers of the bank. For the convenience of this Hon'ble Court the copy of letter dated 25-03-1991 is hereby attached as Annexure A-I.

That the drivers are mostly required to visit out stations and in this way they have to start some time early in the morning before the schedule or opening hours of duty and some time come back in late night hours much after closing hours of their duty. The above mentioned drivers have to remain out along with the Chairman of the respondent bank or till the worthy Chairman desires. The above mentioned drivers were doing their duty beyond their normal hours as such they are entitled for the payment of over time allowance. It is respectfully submitted as per norms fixed by the bank a driver has to work for 7 hours he is entitled for the hours in a day, if he works, he is entitled for the release of over time for the period which he worked beyond 7 hours in a day.

That since above mentioned drivers namely Shri Ramphal and Shri Satish Prakash have done over time and worked beyond 7 hours in a day as such they are entitled for the release of over time allowance which the respondents have failed to release. The log books maintained in the office itself speaks over time work which the above mentioned drivers have done.

That since respondent bank failed to release over time allowance to above mentioned drivers as such a letter/demand notice dated, 30-12-1998 was served to the respondents. The copy of notice dated 30-12-1998 is hereby attached as Annexure A-2.

That in response to the letter dated 30-12-1998 a letter dated 18-01-1998 was issued by the Assistant Labour Commissioner, Faridabad. The copy of the said letter dated 18-01-1998 is hereby attached as Annexure A-3.

That in response to the letter dated 18-01-1998 the respondent bank issued a letter dated 05-02-1999 stating that they are paying Rs.20 per day to the drivers as over time allowances. The copy of letter dated 05-02-1999 is hereby attached as Annexure A - 4.

That since above mentioned drivers are not satisfied with the reply of the respondent bank as such matter could not be finalized between the workmen and the management as such ALC vide letter dated 30-09-1999 referred the matter to the government. The letter dated 30-09-1999 is hereby attached as Annexure A - 5.

That the government vide letter dated 20-01-2000 referred the matter to this Hon'ble Court for further adjudication. The copy of the letter dated 20-01-2000 is hereby attached as Annexure A -6.

That the above mentioned drivers are entitled for the release of over time allowance as per the award and as per the norms fixed by the bank. It is respectfully submitted that the bank itself issued a letter dated 04-10-1996 in which the rates of over time allowance were fixed. The copy of the letter dated 04-10-1996 is hereby attached as Annexure-7.

That it is respectfully submitted that during election, over time was done by the above mentioned driver and the above mentioned drivers submitted their claim to the respondent bank for over time as such the bank accepted the over time allowance of the above mentioned drivers, however, it was stated that this amount can be released by the State Government only. It is respectfully submitted that the bank issued a letter dated 18-03-1998 to the State Government for the release of the over time allowance to above mentioned drivers. The copy of letter dated 18-03-1998 is hereby attached as Annexure A-8.

That from the perusal of Annexure A-8, it is clear that the bank itself issued a chart relating to the over time duty, it means the bank is admitting the rates of over time. Once the bank himself admitting the rates of over time, as such the bank himself also certainly entitled for the release of same rates to the employees.

That the above mentioned drivers has calculated the arrears w.e.f. 1-01-1987 for their over time duties. The copy of the same are hereby attached as Annexure A - 9 and A-10 respectively.

That it is pertinent to mention here that the Annexure A - 9 and A 10 have already been submitted to the respondent bank which have been duly received by the bank.

That it is pertinent to mention here that from the day when the above mentioned drivers submitted a demand notice to the respondent bank, from that day the respondent bank has withdrawn log book of the vehicles from the above mentioned drivers and the same is now being filled by the bank staff whereas it is a duty of the drivers to fill the log book. The respondent bank has withdrawn the log book simply on the ground that the above mentioned drivers may not fill the log book and they may not claim over time allowance on the basis of log book. It shows malafide intention of the respondent bank. It is pertinent to mention here that even today the above mentioned drivers are doing over time duty every day but they have been refused to enter their over time in the log book.

That as per Annexure A - 9 & A - 10, Ramphal Driver is entitled for the release of Rs.4,95,057,52 calculated upto 28-2-1999 and similarly Satish Prakash Driver is entitled for the release of Rs. 6,39,633,16 calculated upto 28-2-1999. The above mentioned drivers are entitled for the release of over time allowance till the day, they have done over time.

That above mentioned drivers also entitled for the release of interest @ 18% from the date of its entitlement till its actual payment.

It is, therefore, respectfully prayed that a direction may kindly be issued to the respondents to release the amount of over time allowance along with interest @ 18% from the date of its entitlement till its actual payment, till the above mentioned drivers have done their over time duties. Cost of the applicant may also be awarded.

The respondent/management has filed Written Statement. In the Written Statement it has been stated that the claimants have no cause of action to file the present claim statement as nothing is payable by the management in the shape of over time wages as claimed by the drivers.

That the claim of the applicants is devoid of any merit on the facts of the record and the amounts claimed by them appear to be imaginary/fictitious as they have not supported the said claim on the basis of any record/s or have furnished any evidence in this regard.

That the dispute in question is an individual dispute and not an industrial dispute as per the provisions of Section 2 (k) of the ID Act, 1947 and therefore, the reference is not maintainable.

That the reference is barred by the principles of *res judicata*. The Drivers Shri Ramphal and Shri Satish Prakash had earlier filed an application under Section 3-C(2) of the ID Act, 1947 in the Labour Court at Gurgaon for payment of overtime allowance and the same was dismissed on 12-11-1998.

That the present reference is barred by principle of constructive *res judicata*. The claim being advanced in the present reference would be deemed to have been abandoned by the Drivers as it was not included in the litigation dilated upon in para 14 of this reply on merit. The present claim would also be deemed to have been heard and decided against the drivers in the said litigations.

That the reference is alternatively barred by order 2 Rule 2 of the Civil Procedure Code. The drivers cannot be allowed to litigate piece meal in infinity as that would be against the law of the land.

That the claim of the drivers is bad due to non-joinder of necessary parties. During the election duty the drivers were on the disposal of the Election Commissioner and the TA Bill/Overtime allowance are required to be paid by the concerned office. However, the Election Commission/State Government have not been joined as parties to the present claim.

That with reference to paras 2 and 3 it is stated that the award of the National Industrial Tribunal is a matter of record. There is no reference of over time allowance to the drivers in the letter dated 25-03-1991. therefore, Annexure A-I has no relevance.

That the contents of para 4 are wrong and denied. It is submitted that two writ petitions (Civil Nos.7149-50 of 1982 and 132 of 1984) were filed in the Hon'ble Supreme Court seeking *inter alia*, parity with employees of the nationalized banks in respect of pay, salary, other allowances and other benefits. National Industrial Tribunal was appointed by orders of Hon'ble Supreme Court to decide this issue relating to pay, salary, other allowances and other benefits payable to the employees of RRBs. The decision of the Tribunal was to be final and binding on both the parties. The Tribunal by its award dated 30-4-1990 observed that the Officers and other employees of RRBs will be entitled to claim parity with the Officers and other employees of the sponsor bank in the matter of pay scales, allowances and other benefits. The Tribunal also observed that so far as the equation of posts and the consequent fixation of the new scale of pay, allowances and other benefits for Officers and other employees of the RRBs at par with the officers and other employees of comparable level in corresponding posts in sponcor banks and their fitmat into the new scales of pay as are applicable to Officers of sponsor banks in corresponding posts of comparable level, it is a matter which has to be decided by the Central Government in consultation with such authorities as it may consider necessary. This will also include the pay scales, benefits, other allowances and fitment of sub-staff of RRBs with the sub staff of sponsor banks.

That the Government of India issued certain instructions to RRBs *vide* their letter dated 22-2-1991. One of the instructions issued was that the allowanes/special allowances and other benefits which are provided in BPS and the service regulations of the concerned sponsor banks be extended to the employees/officers of RRBs respectively. The allowances and other benefits which will have retrospective and prospective effects were detailed in Annexure VI of the said letter dated 22-2-1991 of

Government of India. As per the said Annexure overtime allowance is applicable w.e.f. 1-3-1991 for workmen staff only.

That as per clause 9.13 of first BPS, if the period between the time when a workman commences work on that day and the time at which he returns to his place of work from out stations duty exceeds his normal working hours plus recess interval, full halting allowance is payable to him and he is not entitled to any over time allowance. As per clause 14.2 of first BPS the actual hours of work of Drivers, exclusive of recess period are seven and half hours for week days (excluding Saturdays) and five hours for Saturdays. For out station duty the drivers are being paid halting allowance @ Rs. 40 or Rs. 60 if the period between the time they commence work on that day and the time at which they return to place of work exceeds their normal working hours plus lunch recess. If the period of outstation duty is less than their normal working hours they are being paid half of the halting allowance applicable to them. Further considering the nature of duties of the drivers, they are being paid compensation for odd hours duty @ Rs. 20 whenever they are required to report early for duty and additional Rs. 20 if they work beyond duty hours. In addition to above allowances, special driving allowance of Rs. 923 per month is paid to them. This allowance also attracts DA and HRA as per the prevailing rates. They are also given compensatory leaves for duties rendered by them on holidays. Therefore, the claim as made out in this paras specifically denied and it is submitted that the drivers are being fully compensated for all duties rendered by them by making special provision stated above keeping in view the nature of their duties.

That the demand by the Drivers being without any basis and being contrary to the rules, the question of releasing over time allowance does not arise.

That the contents of para 11 are denied. No over time is payable to the drivers in view of submissions made in para 4 above. So far as letter dated 4-10-1996 is concerned it refers to payment for 15-4-1995 in view of declaration of 11/12-4-1995 as a holiday due to death of Morarji Desai, Ex. Prime Minister of India. This letters does not refer to drivers. It is clear from a bare perusal of the letter dated 4-10-1996 that the drivers are specifically excluded for the purpose of payment of over time allowance.

That the contents of para 12 refer to election duty done by drivers. It is denied that the Bank accepted the over time allowance claimed by the drivers for election duty. The Bank only recommended to the State Government for payment of over time to the drivers for the election duty. The claim has been referred to the State Government and as and when it is received the amount will be paid to the drivers. State Government has not been made a party to the claim lodged by the applicants.

That the contents of para 13 are denied. Each and every allegation in the same is denied. The correct provisions applicable to drivers as per rules are mentioned above. The drivers cannot take the benefit of special provisions such as special pay, odd hours duty payment, halting allowance etc. and also claim over time.

The workmen applicants have filed rejoinder. In their rejoinder they have reiterated the averments of their claim statement and have denied most of the paras of the Written Statement. The management has also denied most of the paras of the claim statement.

Evidence of both parties has been taken.

It transpires from perusal of the order sheet that several dates were given for cross-examination of the management witness. Management witness did not turn up. So the evidence of the management has been closed.

Heard arguments from the side of the workmen.

It was submitted from the side of the workmen that Driver Shri Ramphal and Shri Satish Prakash are working as Drivers in Head Office of Gurgaon under the kind control of the respondent. In view of the directions issued by the Hon'ble Supreme Court NIT's award dated 22-2-1991 was implemented over the bank employees. These two employees have worked for more than 7 hours. They have not been paid over time allowance. Over time is paid during the election also.

I have perused the record. It has not been anywhere mentioned in NIT Award that the Drivers will get over time allowance. So far as the election duty is concerned it is extraordinary duty. It is taken continuously for 24 hours or more so the State Government pays over time allowance to the Drivers engaged in election duty.

The case of the management is that Shri Ramphal Driver has illegally claimed Rs. 4, 95, 057.52 and Shri Satish Prakash has claimed Rs. 6,39, 633.6 as overtime allowance. They have not submitted any document to show that they have worked over time and over time allowance is to be paid to them.

The case of the management is that considering the nature of duties of drivers they are being paid compensation for odd hours duty @ Rs.20 whenever they are required to report early for duty and additional Rs. 20 if they work beyond duty hours. The drivers also get special driving allowance of Rs.923 per month. This allowance attracts DA & HRA as per the prevailing rates. They are being given compensatory leaves for duties rendered by them on holidays.

In letter dated 4-10-1996 the drivers have been specifically excluded for the purpose of payment of over time allowance.

It is true that the drivers have to start early to take the officers to office and they also start after office hours. They are already been paid Rs. 20 for early reporting and Rs.20 for late hours work. The drivers are also being paid Rs.923/- as special allowance. This amount is paid to them as basic pay. They get DA and HRA over this allowance. Thus it is component of their basic pay. It is special allowance for drivers.

In case the drivers are already paid special allowance in view of their driving skill and special duties performed by them they cannot claim any over time allowance. It is by nature of the duties that they have to report early and they have to leave office after its closure that is why Rs.923 is given to them along with DA & HRA. The drivers are paid different scales of pay in view of their duties. They are not entitled for any over time allowance. The Driver Shri Ramphal has admitted in his cross examination that the allowance of Rs.923 also attracts DA & HRA as per the prevailing rates. It is correct that drivers are being fully compensated for all duties rendered by them by making special provision of allowance mentioned above.

This witness has also admitted that in view of nature of duties the drivers are paid special allowance and they are fully compensated. On Election duty they get overtime allowance. For day to day duty special allowance with DA & HRA is given to them for early reporting and late going. They are given compensatory leave for holidays work. The pay scale of the drivers has been fixed considering their overall duties. There is no provision for over time allowance of the drivers. There is no merit in the claim statement. The drivers are not entitled to get any over time allowance for day to day normal duties as special allowance is paid to them.

The reference is replied thus:

The action management of Gurgaon Gramin Bank in not making payment of over time allowance to his drivers for their day to day duties is quite just and legal. The Drivers are not entitled to get any over time allowance for their day to day duties. The management has carefully followed and implemented the orders concerning payment of over time allowance to its drivers. The drivers are not entitled to get any relief as prayed for.

Award is given accordingly.

Date : 09.11.2006. R.N. RAI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4761.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईस्ट कोस्ट रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या आई डी-22/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था ।

[सं. एल-41012/86/2004-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4761.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here by publishes the Award (ID-22/2005) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar new as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of East Coast Railway and their workmen, which was received by the Central Government on 15-11-2006.

[No. L-41012/86/2004-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE NO. 22/2005

Date of Passing Award—16th October, 2006

BETWEEN

1. The Management of the Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar, OP. Mancheswar Railway Colony, Bhubaneswar.

2. The Management Chief Personnel Office, East Coast Railway, O. P. Chandrasekharpur, Bhubaneswar, Orissa.

... 1st Party-Managements.

AND

Their Workman, Shri B. Bhaskar Rao,
Technician Grade-I, T. No. 15109, Electric Section,
Carriage Repair Workshop, PO. Mancheswar
Railway Colony, Bhubaneswar.

...2nd Party-Workman

APPEARANCES

P. C. Swin. ...For the 1st Party-Management

B. Bhaskar Rao. .. For Himself the 2nd Party Workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-41012/86/2004-(IR (B-I), dated 24-8-2005 :—

"Whether the demand of the disputant Sh. B. Bhaskar Rao, Technician Grade-I, Carriage Repair Workshop, E. Coast Rly., Mancheswar to correct the seniority list of skilled Artisans Grade-I and insert his name at appropriate place i.e. above S/Sh. N.C. Sethy and N. Sethy is legal and justified? If so, what relief the workman is etitled to?

2. The disputant-workman and the representative of the immediate employer are present today before the Lok Adalat.

3. Today while submitting before the Tribunal both the parties expressed their desire to compromise the case and accordingly submitted a joint petition of compromise. Heard the parties. The workman agreed to forgo the dispute under reference provided his case is re-considered for promotion to which the Management (immediate employer) agreed and filed a joint settlement. Accordingly, the immediate employer Opp. Party No. 1 is directed to give promotion to the workman against some higher grade vacancies subject to his passing out the departmental test. Such promotion is to given within a period of six months from the date of publication of this award. The Management is to make necessary arrangements in between for the department test of the workman. In case the Management fails to do so it would be open to the workman to re-agitate the matter.

3. Reference is answered accordingly.

N. K. R. MOHAPATRA, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2006

का.आ 4762.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या आई डी-38/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था ।

[सं. एल-12012/164/2003-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4762.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID-38/2003) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 15-11-2006.

[No. L-12012/164/2003-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT

Shri N.K.R. Mohapatra,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

Industrial Dispute No. 38/2003

Date of Passing Award—26th October, 2006

BETWEEN

(1) The Management of the Chief Manager,
State Bank of India, Attabira Branch,
At./Po. Attabira, Dist. Bargarh.

(2) The Assistant General Manager,
State Bank of India, Zonal Office,
Nayapara, Sambalpur.

..... 1st Party-Managements

AND

Their Workman, Shri Minaketan Khamari,
S/o. Shri Bhagirathi Khamari,
Village Nagenpali, P. O. Tora, Dist. Bargarh.

.... 2nd Party-Workman

APPEARANCES

Shri U. C. Mishra, Manager, Law ... For the 1st Party-Managements

None ... For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-12012/164/2003-(IR(B-I), dated 21-11-2003,

> "Whether the action of the Management, State Bank of India, Attabira Branch, PO: Attabira, Dist. Bargarh terminating the services of Shri Minaketan Khamari, Ex-Messenger/Sub-Staff from 20-6-2000 without giving notice and following the provisions of Industrial Disputes Act, 1947 and not paying the differential wages and payment of bonus for the period from 1-1-1998 to 20-6-2000 to Shri Minaketan Khamari is justified? If not, what relief the workman is entitled to?"

2. It is alleged by the 2nd Party-Workman that he was appointed as a Messenger/Sub-staff in Agricultural Development Branch of State Bank of India at Bargarh on 1-10-1986 and while working there continuously was refused employment on 31-12-1987. However on his personal request to the concerned Branch, the Branch Manager wrote to the zonal Office of State Bank of India recommending for his further engagement. While this matter was pending, he was asked by the bank to face an interview on 6-2-1990 and again on 29-10-1993 and thereafter he was issued with a letter No. BR/43 dated 10-9-1996 by the Branch Manager of another Branch at Attabira appointing him as a sub-staff of that Branch. Pursuant to such a letter he joined in Attabira Branch on 20-9-1996 and continued there on usual salary from 20-9-1996 till 31-12-1997. From 1-1-1998 onwards he was not paid his wages and bonus though he worked there up till 20-6-2000. It is further alleged that on the joining of one Munshi Sahu in the Attabira Branch on 20-6-2000 he was refused further employment since that day without any notice or retrenchment compensation tanta mounting to illegal retrenchment.

3. While denying the aforesaid story of the workman; it is averred by the Management in short that the workman was never given any appointment for a continuous period either in the A.D. Branch at Bargarh or in the Attabira Branch as claimed by the workman. Rather he was engaged on daily wages basis as contingent worker as and when required and in no case he had worked continuously for 240 days a year. According to the Management for regularization of such temporary workers working in different branches an agreement was entered into between the State Bank of India on one hand and the State Bank Employees Federation on the other hand in 1988 and for that purpose different modalities were adopted. According to such modalities applications were invited from these type of workers, both working and earlier working and depending upon their length of engagement period they were grouped as A, B, C and called upon to face suitability test and group-wise list of successful persons were prepared for their future absorption against the regular vacancies and the new posts created for the purpose and with the expiry of the terms of settlement on 31-3-1997 those of the selected persons who could not be regularized within that period could not be engaged further nor regularized for want of vacant posts. As regards the workman it is averred by the Management that he was simply engaged intermittently for a total period of 178 days during 1-1-1986 to 31-12-1987 in the Bargarh A.D. Branch. After the aforementioned agreement with the Federation in 1988, the workman applied for the post by providing his Bio Data and on that basis he was empanelled under Category-C and was called upon to face an interview on 6-2-1990 and again for preparation of a supplementary list on 29-10-1993 and he was placed in Sl. .No. 132 of the Supplementary list for his future absorption.

4. As regards the letter of engagement dated 10-9-1996 issued to the workman by the Branch Manager of Attabira to which the workman has referred, it is further contended by the Management that the same was never issued on the basis of the supplementary waiting list prepared by the Management. But to meet temporary urgency the workman was engaged by the Branch Manager of Attabira in his above letter on daily rate basis to work as and when required, and therefore, that should not be taken as an appointment letter issued as per the terms and conditions of the agreement referred earlier. It is further contended by the Management that after regularization of the suitable persons and on their posting at Attabira Branch there was no further scope for the Branch Manager concerned to provide work to the workman after 20-6-2000. Moreover when during such period the workman was never engaged continuously for 240 days or more in any year, there was no obligation on the part of the Management, to serve a notice or pay retrenchment compensation to the workman as per Section-25-F of the Industrial Disputes Act.

5. On the basis of the pleadings of the parties the following issues were framed :

ISSUES

1. Whether the workman Shri Minaketan Khamari was working as a Messenger/Sub-Staff under the Management?
2. Whether the workman has been terminated from service with effect from 20-6-2000 and if so, whether the Management is justified in doing so?
3. Whether the Management is justified in not paying the differential wages and the bonus for the period from 1-1-1998 to 20-6-2000 to the workman?
4. If not, to what relief the workman is entitled ?

6. Before dealing with the matter issue-wise it becomes pertinent to mention here that after the above issues were framed neither the workman nor any other person on his behalf could pay any interest to appear and prove his case. As a result, after repeated notices being sent to him from the side of the Tribunal, he was set ex parte on 7-3-2006 asking the Management to adduce its evidence.

7. From the evidence of the sole witness examined on behalf of the Management it appears that during the period from 1-1-1986 to 31-12-1986 the workman was engaged on casual basis intermittently for a total period of 125 days and again for 73 days during 1-1-1987 to 31-12-1987 in the Bargarh A.D. Branch. Therefore, when on the basis of an agreement with the Federation the Management invited applications from all these temporary workers for consideration of their regularization, the workman applied for the same giving his Bio-Data. After two successive interviews one in the year 1990 and another in the year 1993 the workman was empanelled and placed in Sl. No. 132 of the Supplementary Waiting List. The evidence of the witness further indicates that within the cut-off date of the agreement with the Federation i.e. within 31-3-1997, the chances of the workman did not came for regularization though many others above him could be accommodated from out of that list in which his position was at Sl. No. 132. His evidence also discloses that thereafter on the request of the workman he was given some temporary engagement after 31-3-1997 in Attabira Branch intermittently for a period of 10 to 15 days in average in each month during 1-4-1997 to 20-6-2000 on consolidated wage of Rs. 50/- per day from out of the petty cash. The evidence of the witness further discloses that the workman was never engaged against any permanent post either continuously or intermittently so as to entitle himself to get regular pay of that post or Bonus.

8. The afore-stated unchallenged evidence of the Management having not been controverted in any manner, I hold that the non-engagement of the workman after 20-6-2000 does not amount to retrenchment, his engagement not being continuous for a period or 240 days and as such the Management was justified in not complying the provisions of Section-25-F of the Industrial Disputes Act.

9. So also when the evidence of the witness shows that the workman was never engaged against any regular post or posts that were lying vacant temporarily, he is also not entitled to claim regular pay of a permanent employee, his engagement purely being intermittent and casual. For the self same reasons he is also not entitled to get bonus for any period of his work.

10. Accordingly the reference is answered.

N. K. R. MOHAPATRA, Presiding Ofiicer

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4763.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साऊथ ईस्टर्न रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 160/03; 162 से 169/03; 176 से 180/03; 182/03; 186/03; 191/03; 193/03; 195/03; 219/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-41012/52; 05; 04; 03; 02; 01; 43; 48; 54; 53/2003-आई आर (बी-I);

एल-41012/191; 224; 226; 225; 220; 193; 200; 218; 207; 221/2002-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4763.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. Nos. 160/03; 162 to 169/03; 176 to 180/03; 182/03; 186/03; 191/03; 193/03 195/03; 219/03) of the Central Government Industrial Tribunal/Labour Court, Nagpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Eastern Railway and their workmen, which was received by the Central Government on 15-11-2006.

[No. L-41012/52; 05; 04; 03; 02; 01; 43; 54; 53; 48/2003-IR (B-I)

L-41012/191; 224; 226; 225; 220; 193; 200; 218; 207; 221/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI A.N. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

AWARD

Date: 3-1-2006

Case No. (s)	Applicants
160/2003	Shri Shyamal Modak S/o of Vishwanath Modak
162/2003	Shri Sanjay S/o Yeshantrao Atkari
163/2003	Shri Prakash S/o Narayan Tijare
164/2003	Shri Shriram S/o Subhairam Jayaswar
165/2003	Shri Rajesh S/o Samarth Bansad
166/2003	Shri Sheikh Fakruddin S/o Malil Mohammed
167/2003	Shri Sanjay S/o Hiralal Yadav
168/2003	Shri Hanumant S/o Bhaurao Chandrashekar
169/2003	Shri Brahmanand S/o Fathuji Meshram
176/2003	Shri Vasant S/o Yadavrao Barsagade
177/2003	Shri Rajesh S/o Vasudeo Nagpure
178/2003	Shri Mahadeo S/o Ramchandra Braskar
179/2003	Shri Arun S/o Shyamrao Rokade
180/2003	Shri Mahendra S/o Ramlochan Shukla
182/2003	Shri Panneru Vikay Sekhar Rao S/o Jogeshwar Rao
186/2003	Shri Natthu S/o Mahadeo Borkar
191/2003	ShriMahendra S/o Sukhram Yadav
193/2003	Shri Manish S/o Mahesh Chandra Saxena
195/2003	Shri Prakash S/o Duryodhan Tijare
219/2003	Shri Sunil Kumar S/o Premlal Dhurve

Versus

The Sr. Divisional Commercial Manager,
South Eastern Railway, Nagpur Division,
Nagpur (in all the above cases)

The Central Government after satisfying the existence of disputes between the above applicants and the Sr. Divisional Commercial Manager, South Eastern Railway, Nagpur Division referred the same for adjudication to this Tribunal *vide* its letters No. L-41012/52/2003-IR (B-I) dt. 11-07-2003, L-41012/05/2003-IR(B-I) dt. 27-06-2003, L-41012/04/2003-IR-(B-I) dt. 27-06-2003, L-41012/03/2003-

IR(B-I) dt. 27-06-2003, L-41012/02/2003-IR (B-I) dt. 27-06-2003, L-41012/01/2003-IR-(B-I) dt. 30-05-2003. L-41012/43/2003-IR (B-I)) dt. 11-07-2003, L-41012/54/2003 -IR (B-I) dt. 11-07-2003, L-41012/53/2003-IR (B-I) dt. 11-07-2003, L-41012/191/2002-IR (B-I)) dt. 30-06-2003, L-41012/224/2002-IR (B-) dt. 30-06-2003, L-41012/226/2002-1R (B-I))dt. 30-06-2003, L-41012/225/2002-IR (B-I)) dt. 30-06-2003, L-41012/220/2002-IR (B-I)) dt. 27-06-2003, L-41012/193/2002-IR (B-I) dt. 25-06-2003, L-41012/200/2002-IR (B-I)) dt. 25-06-2003. L-41012/218/2002-IR (B-I) dt. 27-06-2003, L-41012/207/2002-IR (B-I) dt. 27-06-2003. L-41012/221/2002-IR (B-I) dt. 30-06-2003 & L-41012/48/2003-IR (B-I) dt. 11-07-2003 respectively under clause D of sub-section 1 and sub-section -2(A) of Section 10 of ID Act with the following schedule.

"Whether the action of the South Eastern Railway, Nagpur Division, Nagpur(M.S.) in denying regularization and absorption of the above applicants is justified ? If not, to what relief the workmen concerned are entitled ?"

I am deciding all the above 20 (twenty) cases by this common awards because they are on the common point of regularization and having a similar schedules in all the above cases though referred on the various dates. All the above cases were fixed for adducing the evidence of the petitioners. They were represented by Shri G.S. Singh Thakur, a counsel for the applicants. Nobody has filed affidavit or lead the evidence in support of their claim though sufficient chances were given to them. Today all the above applicants were absent and their counsels submitted the pursis in all the above cases that the petitioners are reluctant to adduce their evidence. They did not submit the evidence also. The counsel has withdrawn his power since the cases were fixed for evidence and the applicants did not remain present and did not adduce any evidence, hence all the above cases are dismissed for default of the petitioners. Hence the award. The original award is kept in case No. 160/2003 and the copies will be kept in remaining cases.

A. N. YADAV, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4764.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स टेकनोमार मेरीन सर्वेयर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार औद्योगिक अधिकरण नं.- 2, मुम्बई के पंचाट (संदर्भ संख्या 2/77/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2006 को प्राप्त हुआ था।

[सं. एल-39011/3/2003-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4764.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.)2/77/2005 of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure in the industrial dispute between the management of M/s. Technomar Marine Surveyors and their workman, received by the Central Government on 16-11-2006.

[No. L-39011/3/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 2 AT MUMBAI

PRESENT:

A.A. LAD Presiding Officer

(Reference No. CGIT-2/77 of 2005)

Employers in relation to the Management of

M/s. Technomar Marine Surveyors

The Director
M/s. Technomar Marine Surveyors,
2/20, Rex Chambers,
Walchand Hirachand Marg,
Mumbai-400 038.

AND

Their Workmen

The Secretary,
Mumbai Port Trust Dock & General Employees Union,
Port Trust Kamgar Sadan,
Nawab Tank Road, Mazgaon,
Mumbai-400 010.

APPEARANCE:

For the Employer : Absent

For the Workmen : Mr. Jaiprakash Sawant Advocate

Date of passing of Award : 22nd September, 2006

AWARD

1. The Government of India, Ministry of Labour by its Order No. L-39011/3/2003-IR (B-II) dated 01-06-2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of M/s. Technomar Marine Surveyors, Mumbai in terminating the services of S/Shri L.V. Shirvedekar, Niraj Roy and Sarjerao Phadtare is justified ? If not, what relief these three workmen are entitled to ?"

2. When referece was fixed for filing pleading by both parties, it was taken in Lok Adalat held on 22-9-2006. However, management did not appear but second party filed purshis Exhibit-8 reporting that he does not want to proceed with reference, relying on that, following order is passed :

ORDER

In view of purshis Ex-8,

reference is disposed of.

Mumbai,

Dated 22-09-2006 A.A. LAD, Presiding Officer

Ex. No. 8

Ref. CGIT-2/77 of 2005

PROCEEDINGS BEFORE LOK ADALAT ON 22-09-2006

REF. CGIT-2/77 of 2005

M/s. Technomar Marine Surveyors

V/s.

MbPT Dock & Gen. Employees Union

None present for 1st party

Adv. Jai Prakash Sawant for the Union for second party.

J.P. Sawant, Adv. For union files the purshis of withdrawal/ disposal of Reference as he does not desire to contest the matter.

Sd/-	Sd/-
(J. Sawant)	(M.B. Anchan)
Sd/-	Sd/-
(S. Alva)	(S.M. Chinchwadkar)
Sd/-	Sd/-
(S.S. Karkera)	(M.G. Nadkarni)

नई दिल्ली, 16 नवम्बर, 2006

का.आ 4765.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 205/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/116/2003-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4765.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 205/ 2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workman, received by the Central Government on 16-11-2006.

[No. L-12012/116/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI A.N. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. 205/2003 **Date 6-11-2006**

The Dy. General Manager, Syndicate Bank, E-Wing, 2nd Floor, Maker Tower, Cuffe Parade, Mumbai-400005

Versus

Shri Subhash Chandra, Tulsiram Sahu, R/o Pardeshi Telipura, Bajeria, Nagpur.

AWARD

The Central Government after satisfying the existence of disputes between Shri Subhash Chandra Tulshiram Sahu, Party no. 2 and the Dy. General Manager, Syndicate Bank, E-Wing, 2nd Floor, Maker Tower, Cuffe Parade, Mumbai Party no. 1 referred the same for adjudication to this Tribunal *vide* its letter No. L-12012/ 116/2003-IR(B-II) dt. 25-07-2003 under clause (d) of sub-section 1 and sub-section (2A) of Section 10 of ID Act with the following schedule :—

> "Whether the action of the management of Syndicate Bank in imposing the penalty of dismissal from service w.e.f. 28-02-2003 on Shri Subhash Chandra T. Sahu, Clerk, Law College Square, Nagpur is justified? If not, to what relief the workman concerned is entitled?"

From the schedule it is clear that the petitioner has challenged the order of termination dt. 26-02-2003 which was to take effect from 28-02-2003. He has contended that he is in continuous service of the Party No.1 w.e.f. 4-10-1978 and thus served for more than 23 years. He was charge sheeted on 17-04-2000 under clause 19.5 (E) of Bipartite Settlement and was punished by stopping his pay of one stage in the time scale for the purpose of not submitting the certificates as demanded by the management. According to him there was no condition in the appointment letter to file a validity certificate. He belongs to the Bhunjia- a schedule tribe and got appointment against a reserve category. The management again on 6-11-2001 issued a second charge sheet for the same charges for which he was already punished. It amounts to a double jeopardy which is against the Constitution of India. He challenged the charge sheet by a Writ Petition No. 4070/ 2001 before Honourable Mumbai High Court, Bench at Nagpur in which the Honourable Court ordered to keep the order in abeyance in case of a dismissal for the period of four weeks so as to give the opportunity to the petitioner to challenge it.

He has further submitted that the management finally imposed punishment of dismissal from the service only for the reason that he had not submitted seven documents along with the original caste certificate for verification of his caste. Till today the Scrutiny Committee has not verified his caste. Therefore no order invalidating his caste certificate was passed by the Scrutiny Committee and for this minor misconduct of not producing a document; he was harshly punished for which his entire family is suffering. He has challenged the order of punishment of dismissal by

Writ Petition bearing No. 3179/2002. The Honourable High Court stayed the implementation of it, however subsequently as the alternative remedy was available to him dismissed the above Writ. The local Branch Manager by affixing a copy of the termination order dt. 28-02-2003 dismissed him. Then on failure of conciliation proceedings, the Central Government referred this dispute to CGIT, Nagpur. Earlier to it also he had filed a Writ Petition No. 4772/2003 seeking some directions from Honourable High Court. Now he is praying to set aside the dismissal and reinstate him with the full back wages.

The management having admitted that the petitioner was its Clerk on a permanent post, resisted the claim seeing that his contention is totally false, misrepresenting the Court. He was appointed against the reserve post of schedule tribe. The Government of India by its letter No. 102/10/03/89-SCT(B) dt. 23.03.90 issued guidelines to get the caste certificate of the petitioner verified though the Caste Scrutiny Committee. As such the management submitted a Xerox copy of his caste certificate which was with the Bank for verification on 05-12-1992. The petitioner along with some other persons preferred a appeal against it to the Additional Commissioner, Nagpur and the cases were remitted for fresh verification with in a three months. As per procedure the Scrutiny Committee informed the Bank to obtain 18 documents as per list from the petitioner. The management directed the petitioner to comply it on which the petitioner sought a time till 31-01-1995 and then refused to comply the same by his letter dt. 10-02-1995. The management under its letter dt. 16-02-95, 12-01-96 refused to produce the originals. He was again asked by the letter dt. 13-02-99 and 26-02-99 to submit the requisite document but the petitioner sticked up to his stand by refusing to submit the same. According to the management he has committed misconduct and therefore a charge sheet was issued however during the pendency of the enquiry submitted the attested copy of the documents. However considering the compliance of the order, a minor punishment was awarded to him on 12-09-2000 in the nature of deduction on basic pay.

The Scrutiny Committee vide its letter dt. 13.03.2001 informed the management that it was not possible to verify the caste in the absence of documents and they demanded the original caste certificate and some other documents. Accordingly the management directed the petitioner to comply the letter dt. 13-03-2001 and 24-05-2001 and on so many occasions to comply the directions of Scrutiny Committee by producing the original caste certificate and other certificates required. The petitioner flatly refused it which was again amounting to a misconduct of a serious nature; it initiated the enquiry against him. Subsequently as he was found a guilty of misconduct like disobeying the orders of the superior officers he was dismissed after giving show cause notice as per procedure. According to the management the order of dismissal is proper. At the time of appointment he had produced a caste certificate and got the appointment against the reserved post for the schedule tribes. Non production of document for the verification of the caste Scrutiny Committee itself indicates that his certificate was bogus and he is not belonging to the Schedule Tribe. He has played a fraud by producing false caste certificate and he is not at all entitled to continue on the same post. The management has prayed to dismiss the reference.

At the out set I would like to point out that the order of dismissal is subsequent to the enquiry, it was expected to consider a preliminary issue of validity of enquiry. However both the parties have submitted a Pursis that they are not challenging the validity of the enquiry. I have heard the parties on the merits of the case. They have not adduced any oral evidence besides the documents filed by them on record. Now the point for my consideration is whether the findings of the Enquiry Officer are perverse, the punishment is disproportionate and harsh and the order of the removal is illegal.

Undisputedly the applicant was appointed against the reserve post of Schedule Tribe. The petitioner has challenged the termination order w.e.f. 28-02-2003. He was charge sheeted for the gross misconduct of disobedience of lawful and reasonable order of the management vide clause No. 19.5 (E) of the bipartite settlement. It is the case of the respondent that for the purpose of verification of the Caste Certificate as the petitioner was claiming to be from a Schedule Tribe being from Bhunjia caste, as per direction of the Government the certificate which was produced by him was sent for verification to the Scrutiny Committee vide its letter dt 05-12-1992. The Government of India has issued the guidelines for verification by its letter dt. 23-03-1990. The Scrutiny Committee informed the Bank to obtain some documents and accordingly the Bank directed the petitioner to comply it. He was repeatedly asked to comply the orders, however in writing the applicant refused to submit the required documents then the charge sheet was served to the petitioner under bipartite settlement for the misconduct as indicated above which ended finally in the dismissal of the petitioner. It seems that earlier also, the Scrutiny Committee had called certain documents for caste verification but since those were insufficient, the committee had demanded more documents. At that time also as the petitioner had not supplied required documents, he was charge sheeted and at the end he submitted an attested copy of the caste certificate, the management awarded a minor punishment of reducing him to the lower rank. However it was not sufficient and therefore the Scrutiny Committee again asked to submit the required documents and as the petitioner failed, he was again charge sheeted on the second occasion.

On the basis of the above facts, Mr. Narnaware appearing for the petitioner submitted that since he was already punished for the gross misconduct of non production of the documents and consequently disobedience of the legal and reasonable order under the same provisions of bipartite settlement, he can not be again charge sheeted and punished. According to him it is

amounting to a double jeopardy which is prohibited under the Constitution. However this submission of the counsel for the petitioner can not be accepted simply for the reason that it was a second legal and reasonable order of the management that has been disobeyed by the petitioner. It was the second disobedience and therefore misconduct on the second occasion for which he is liable for punishment as per bipartite settlement. This can not be a double jeopardy. Moreover, punishment on one occasion will not be a license to commit the similar misconduct in future. By no stretch of imagination it can be said a double jeopardy. As the Scrutiny Committee for the purpose of deciding the genuineness of the certificate of which attested copy was sent earlier has demanded some supporting documents, it was obligatory for the management to call it from the workman and similarly it was the duty of the workman to produce the required documents and cooperate the committee. It seems that the refusal to submit the documents was presumably to avoid the findings of the Scrutiny Committee. In fact the process of scrutiny was stalled, therefore it was second misconduct and there was nothing wrong in issuing a second charge sheet.

So far as the perversity of the findings of the Enquiry Officer is concerned, nothing is submitted because no evidence has been adduced except the documents. The documents on record are clear enough to show that the findings of the Enquiry Officer can not be doubted and called as a perverse. The documents are clearly supporting that the misconduct has been committed by the petitioner and he disobeyed the legal orders of the management. The evidence is sufficient to prove it.

Further on behalf of the petitioner the learned counsel has submitted the Xerox copies of the orders and judgments of the Honorable High Court. They are W.P. No. 3309/04, Ramesh Hedaoo & 19 others versus General Manager, Syndicate Bank, W.P. No. 3004/04, Madan Chapparghre & 31 others versus The Controller of MSRTC, W.P. No. 1686/04 and submitted that in view of the decision of the above cases and the reported case of State of Maharashtra versus Milind Katware, the petitioner is entitled for the protection of the service because he has served for more than 23 years. But the principles of the reported case Milind Katware, which are followed in the referred cases are different than the case of the petitioner. In the cited case of Milind Katware, the dispute was whether the Halba Kostis are included in the list of the Scheduled Tribes and since they were enjoying reorganization as a Scheduled Tribe particularly in the state of Maharashtra, a protection was given to them on undertaking that they or their heirs would not claim any benefit of the Schedule Tribe in future. Undisputedly all the petitioners in those cases were Halba Kostis. Their caste was not in question, on the contrary it was undisputed. Here in the case of the petitioner the dispute is whether the petitioner is belonging to Bhunjia caste which is undisputedly in the list of schedule tribes. Moreover there was a specific circular of the Maharashtra state declaring that they should be continued. It was specifically for the Halba Kostis, of the Maharashtra State. It is not applicable to the petitioner being an employee of the Central Government.

The another cited case of Ashok Khapre, W.P. No. 2507/03 was also on different footing. Alike other cases the petitioner Ashok Khapre was claiming as a Halba Kostis and the Scrutiny Committee has refused to verify his caste because he had not produced the original caste certificate. However except the caste certificate from the Executive Magistrate all the certificates like School Leaving Certificate, College Leaving Certificate, the document showing caste of his father and the relatives from the paternal sides were submitted by him to the Scrutiny Committee as well as before the Honorable High Court The Honorable High Court on satisfying that he belonged to the Halba Kostis directed to the Scrutiny Committee. The Scrutiny Committee was a party to that petition. The present petitioner has not filed a single document on record showing his caste. He is refusing to submit the supporting documents demanded by the Scrutiny Committee to consider his attested caste certificate. The original was never sent to the Scrutiny Committee for verification. If really he is belonging to the Schedule Tribe, he could have brought the original Caste Certificate at any time from the Competent Authority, who is empowered to issue Caste Certificate. There is nothing on record to indicate that he had tried at anytime to get such documents. In such circumstances how he can claim protection as awarded to Halba Kostis after satisfying their caste?

It appears that the petitioner instead of cooperating the Scrutiny Committee and the management for verifying the genuineness of his caste has obstructed the process itself by not producing the required documents, for the reason that the genuineness of the caste certificate is doubtful even to the knowledge of the petitioner. As such the submissions of the management that it is forged and false document has considerable force. Similarly the submissions of the management that he has played a fraud by submitting a false certificate will have to be accepted.

Further according to the petitioner, the punishment awarded by the management is harsh and disproportionate to the misconduct. If he had obtained a reserved post of scheduled tribe by producing a false certificate, his initial appointment will have to be treated as illegal and in view of the principles in reported cases of the Honorable Apex Court reported in 2004, LAB, IC, 556, Vishwanath Pillai versus State of Kerala and others and reported in JT, 2005(8), Supreme Court, Page No. 326, Bank of India versus Avinash D. Mandivikar, I do not think that the punishment is harsh. On the contrary it is a proper and in proportion to the misconduct which was occurred on second time. Hence no relief can be granted to the petitioner. The order of the dismissal and the action of the management is justified and proper. Hence the Award.

A. N. YADAV, Pesiding Officer

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4766.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण जोधपुर के पंचाट (संदर्भ संख्या 3/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/235/1998-आई आर(बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4766.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2001) of the Industrial Tribunal, Jodhpur as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen which was received by the Central Government on 16-11-2006.

[No. L-12012/235/1998-IR (B-II)]
RAJINDER KUMAR, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी :—श्री पुष्पेन्द्रसिंह हाड़ा, आर.एच.जे.एस.

औ. वि. (केन्द्रीय) संख्या :—03/2001

राजस्थान बैंक वर्कर्स ऑरगेनाईजेशन मार्फत श्री राजेन्द्र भण्डारी

मकान नं. 1542 छट्टी सी रोड, शक्तिनगर, जोधपुर ।

.....प्रार्थी

बनाम

रीजनल मैनेजर, यू.को. बैंक, डिवीजनल ऑफिस जी-79, शास्त्रीनगर, जोधपुर ।

....अप्रार्थी

उपस्थिति

(1) श्री डी.के. परिहार प्रतिनिधि प्रार्थी

(2) श्री जगदीश व्यास प्रतिनिधि अप्रार्थी

अवार्ड

दिनांक 8-8-2006

1. केन्द्रीय सरकार द्वारा अपनी अधिसूचना क्रमांक एल. 12012/235/98/आई.आर. (बी-II) दिनांक 9-3-99 के द्वारा निम्न विवाद अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम, 1947 के तहत इस न्यायालय को रेफर किया है :—

"Whether the action of the management of UCO Bank Jodhpur in imposing the penalty as 'pay reduced to the next lower stage for two years on Shri Rajendra Bhandari, Clerk-cum-Cashier *vide* order dated 26-8-97 is legal and jsutified? If not, what relief workman is entitled to ?

2. प्रार्थी यूनियन द्वारा अपना मांग-पत्र इस आशय का प्रस्तुत किया गया है कि अप्रार्थी बैंक के डिवीजनल मैनेजर ने पत्र दिनांक 21-5-94 द्वारा श्री राजेन्द्र भण्डारी जो उस समय यू.को. बैंक सरदारपुरा ब्रांच, जोधपुर में लिपिक नियुक्त था, एक आरोप-पत्र दिया गया जिसका उत्तर देने के लिए श्री भण्डारी ने दस्तावेज उपलब्ध करवाये जाने की मांग की थी, दस्तावेज संबंधित न बताते हुए उन्हें यह उपलब्ध नहीं करवाये गये, पुन: निवेदन करने पर पत्र दिनांक 18-8-94 द्वारा दस्तावेजों के निरीक्षण करने की अनुमति दी गई, समय पर अनुमति प्राप्त नहीं होने पर पुन: पत्र लिखे जाने पर अप्रार्थी ने अपने पत्र दिनांक 10-9-94 द्वारा 14/15-9-94 को प्रलेखों का निरीक्षण करने के लिए लिखा, यह पत्र श्री भण्डारी को 16-9-94 को प्राप्त हुआ, इस सम्बन्ध में 17-9-94 के पत्र द्वारा विपक्षी को वस्तुस्थिति से अवगत् करवा दिया गया । श्री भण्डारी द्वारा मांगे गये प्रलेखों की प्रतियाँ उपलब्ध करवाये बिना एंव प्रलेखों का निरीक्षण करवाये बिना ही विपक्षी ने दिनांक 19-9-94 को जांच अधिकारी नियुक्त कर दिया, जांच अधिकारी ने दिनांक 28-11-94 को जांच कार्यवाही आरम्भ की, इस दिन जांच अधिकारी ने श्री भण्डारी को प्रलेखों के निरीक्षण के निर्देश दिये । 16-12-94 को श्री भण्डारी जिस बांच में पदस्थापित था, उस ब्रांच के मैनेजर ने श्री भण्डारी को प्रलेखों के निरीक्षण करने के लिए सरदारपुरा शाखा जाने के निर्देश दिये, 16-12-94 को जब श्री भण्डारी प्रलेखों का निरीक्षण करने पहूंचे तो निरीक्षण नहीं करवाया गया व उसके साथ मारपीट का प्रयास किया गया, जिस संबध में श्री भण्डारी ने सिटी मजिस्ट्रेट, जोधपुर के समक्ष इस्तगासा प्रस्तुत किया । पूर्वाग्रह से ग्रसित होने के कारण जांच अधिकारी बदलने की प्रार्थना श्री भण्डारी द्वारा की गई, उसे नहीं माना गया, जांच अधिकारी ने अनुचित एंव अवैध रूप से जांच कार्यवाही करते हुए 29-9-95 को अपनी रिपोर्ट प्रस्तुत कर दी । विपक्षी ने इस जांच रिपोर्ट के आधार पर श्री भण्डारी के विरूद्ध अपने आदेश दिनांक 26-8-97 द्वारा श्री भण्डारी के विरूद्ध लगाये चार आरोपों के लिए दो साल के लिए नैवस्ट लोवर स्टेज पर वेतन कम किये जाने का दण्ड दिया । जो जांच की गई है वह बैंक कर्मचारियों पर लागू अवार्ड/समझौता के विपरित होने के कारण अवैध है । श्री भण्डारी को जिस प्रकरण के कारण निलम्बित किया गया था उसमें पुलिस द्वारा 19-4-94 को अन्तिम रिपोर्ट लगा दी गई इसके पश्चात् बैंक ने इस प्रकरण में इस्तगाता दायर कर दिया जो अभी विचाराधीन है । बैंक कर्मचारियों पर लागू अवार्ड/समझौते एवं सेवा शर्तों के अनुसार आरोप क्रम संख्या 3 व 4 के सम्बन्ध में जांच कार्यवाही प्रारम्भ भी नहीं की जा सकी । जिस प्रकरण में फौजदारी कार्यवाही चल रही हो उसमें निर्णय होने तक विभागीय कार्यवाही नहीं की जानी चाहिये । प्रलेख बिना उपलब्ध कराये जांच अधिकारी नियुक्त नहीं करना चाहिये था व जांच के दौरान श्री भण्डारी को बचाव प्रतिनिधी नियुक्त करने की सुविधा नहीं दी गई, जांच के दौरान जिरह का समुचित अवसर नहीं दिया गया, कोई निष्पक्ष गवाह प्रस्तुत नहीं किये गये एवं निर्धारित प्रक्रिया का पालन नहीं किया गया । बैंक कर्मचारियों पर लागू मेन्यूअल आंफ डिसीप्लीनरी एक्शन एण्ड रिलेटेडमेटर्स के प्रावधानों का भी पालन नहीं किया गया, जांच अधिकारी पूर्वाग्रह से ग्रसित थे, व जांच

अधिकारी की फाईन्डिंग परवर्स है । दण्डादेश के विरूद्ध श्री भण्डारी द्वारा दायर अपील भी अनुचित रूप से खारिज कर दी गई । कथित आरोप माईनर मिसकन्डक्ट में आता है जब कि दण्ड मैजर मिसकन्डक्ट का दिया गया है । अत: पारित किया गया दण्ड निरस्त किया जावे व इसके निरस्त किये जाने से मिलने वाले सभी आर्थिक व अन्य लाभ प्रार्थी श्री राजेन्द्र भण्डारी को दिलाये जावें ।

3. अप्रार्थी की ओर से जवाब में दिनांक 21-5-94 को प्रार्थी को आरोप-पत्र दिया जाना स्वीकार किया गया है व यह भी स्वीकार किया गया है कि श्री भण्डारी ने प्रलेख उपलब्ध कराने की मांग की थी जिस पर विभिन्न पत्रों के द्वारा दस्तावेज की प्रतियाँ नहीं दिये जा सकने व उनके निरीक्षण की अनुमति दिये जाने बाबत सूचित किया गया था । सभी दस्तावेज प्रार्थी को पूर्व उपलब्ध थे, फिर भी जानबुझकर प्रार्थी ने उक्त दस्तावेज मांगे अन्त में दिनांक 14-9-94 व 15-9-94 को श्री भण्डारी को पुन: सरदारपुरा शाखा में संबंधित रिकोर्ड का निरीक्षण करने व आरोप-पत्र का जवाब प्रस्तुत करने हेतु निर्देशित किया गया परन्तु न तो उनके द्वारा निरीक्षण किया गया न ही आरोप-पत्र का जवाब दिया गया जिस पर अप्रार्थी द्वारा 19-11-94 को जांच अधिकारी नियुक्त कर जांच प्रारम्भ की गई, जांच अधिकारी द्वारा भी प्रलेखों का निरीक्षण करने हेतु प्रार्थी को समुचित अवसर दिया गया व प्रलेखों की प्रतियां भी उपलब्ध करवाई गई । निरीक्षण के समय मारपीट का प्रयास किये जाने का आरोप गलत है, जांच अधिकारी किसी पूर्वाग्रह से ग्रसित नहीं थे, फौजदारी कार्यवाही के लम्बित होने के दौरान विभागीय जांच की कार्यवाही बाधित नहीं है । माननीय उच्च न्यायालय द्वारा भी रिट याचिका संख्या 942/95 में कोई स्थगन आदेश विभागीय जांच को स्थगित रखने के संबध में नहीं दिया गया बचाव प्रतिनिधी नियुक्त करने हेतु नियमानुसार अनुमति दी गई, परन्तु वकील को बचाव प्रतिनिधी नियुक्त नहीं किये जा सकने का आदेश नियमानुसार दिया गया था । श्री भण्डारी द्वारा गए अधिवक्ता की बजाए श्री एल. आर. गौड़ को बचाव प्रतिनिधी नियुक्त करने की सहमती प्रदान की गई जो उपस्थित भी हुए । गवाहों से जिरह हेतु प्रार्थी को समुचित अवसर दिया गया व निर्धारित प्रक्रिया का पालन करते हुए जांच सम्पादित की गई । जांच अधिकारी की रिपोर्ट भी प्रार्थी को दी गई । रिट याचिका का निर्णय होने के पश्चात् अनुशासनात्मक अधिकारी द्वारा 27-6-97 को प्रस्तावित दण्ड की सूचना प्रार्थी को दी जाकर सुनवाई का अवसर प्रदान किया गया, दण्डादेश पारित किया गया । दण्डादेश के विरूद्ध श्री भण्डारी द्वारा प्रस्तुत अपील सुनवाई के बाद निरस्त की गई । जो मिसकन्डक्ट सिद्ध हुआ उसके अनुसार प्रार्थी को दिया गया दण्ड अनुपातिक रूप से उचित है ।

4. प्रार्थी ने मांग-पत्र के समर्थन में स्वंय का शपथ-पत्र प्रस्तुत किया जिस पर अप्रार्थी प्रतिनिधी द्वारा जिरह की गई तथा अप्रार्थी की ओर से किशन सिंह शेखावत व आर. आर. पटेल के शपथ-पत्र प्रस्तुत किये गये जिनसे प्रार्थी प्रतिनिधी द्वारा जिरह की गई ।

5. दोनों पक्षों के प्रतिनिधीगण की बहस सुनी गई । पत्रावली का अवलोकन किया गया ।

6. प्रार्थी के विरूद्ध आक्षेपित आदेश दिनांक 27-6-97 से जो दण्ड इम्पोज किया गया है वह द्विपक्षीय सैटलमेन्ट दिनांक 19-2-1966 के प्रावधानों के अनुसार जांच की जाकर दिया गया है । प्रार्थी स्वंय ने भी अपने मांग-पत्र में यह अंकित किया है कि बैंक कर्मचारियों पर लागू एवार्ड/समझौता उस पर लागू होता है । प्रार्थी ने इस समझौते के तहत लागू होने वाले नियमों की एक प्रति अप्रार्थी बैंक की ओर से प्रस्तुत की गई है व प्रार्थी स्वंय ने भी इसकी एक्स्ट्रैट कांपी अपने समर्थन में प्रस्तुत की है । इन नियमों के अनुसार मिसकन्डक्ट के लिए बैंक कर्मचारी के विरूद्ध विभागीय कार्यवाही की जा सकती है व इसमें बताई गई प्रक्रिया के अनुसार जांच की जाकर कर्मचारी को दण्डित किया जा सकता है । इस प्रकरण में यह देखा जाना है कि जो जांच प्रक्रिया अप्रार्थी बैंक द्वारा अपनाई गई क्या वह इन नियमों के विरूद्ध थी या अपनाई गई प्रक्रिया से प्राकृतिक न्याय के सिद्वांतों का उल्लंघन हुआ ।

7. प्रार्थी ने विभागीय जांच प्रथमत: इस आधार पर दुषित होना बताया है कि उसे आरोप-पत्र दिये जाने के बाद मांग किये जाने पर दस्तावेजों की प्रतियां उपलब्ध नहीं कराई गई न ही निरीक्षण करवाया गया । इस संबंध में प्रार्थी राजेन्द्र भण्डारी द्वारा अपने साक्ष्य में यह बताया गया है कि 21-5-94 को आरोप-पत्र का उत्तर देने के लिए दिनांक 20-6-94 को पत्र द्वारा विपक्षी बैंक से कुछ प्रलेख उपलब्ध कराये जाने की मांग उसने की थी । विपक्षी ने अपने पत्र दिनांक 12-7-94 द्वारा मांगे गये प्रलेख संबंधित नहीं होने से प्रलेख उपलब्ध नहीं कराये 12-7-94 का जो पत्र बैंक द्वारा उपलब्ध कराया गया है उसमें प्रलेख उपलब्ध नहीं कराने का आधार यह बताया गया है कि सभी प्रलेख ऐसे हैं जिनका आरोप-पत्र के जवाब से कोई सम्बन्ध नहीं है व जवाब का अवसर पुन: दिया गया वर्णित अभिलेखों की प्रति बैंक द्वारा देना सम्भव नहीं होने के कारण यह प्रार्थना अस्वीकार की गई इसके बाद प्रार्थी द्वारा पुन: पत्र दिनांक 20-7-94 द्वारा पुन: अभिलेख की मांग करने पर अप्रार्थी बैंक द्वारा दिनांक 13-8-94 के पत्र द्वारा यह बताते हुए कि उसके द्वारा मांगे गये दस्तावेजों की प्रतियों क्यों नहीं दी जा सकती, प्रार्थी को इन दस्तावेजों के निरीक्षण हेतु निर्देशित किया गया । प्रार्थी ने यह पत्र 18-8-94 को मिलना बताया है व इसी दिन निरीक्षण करने हेतु लिखना बताया है परन्तु बैंक द्वारा यह बताया गया कि मूल पत्र में यह दिनांक 19-8-94 लिखी हुई है व प्रार्थी द्वारा जो प्रति प्रस्तुत की गई है उसमें हाथ से कांट-छांट किया जाना प्रतीत होता है । प्रार्थी ने अपने शपथ-पत्र में यह कहा है कि उसे दिनांक 22-8-94 को पुन: एक पत्र लिखा गया जो उसे 1-9-94 को प्राप्त हुआ, इस पत्र में उसे 26-8-94 को निरीक्षण की अनुमति दी गई लेकिन यह पत्र 1-9-94 को प्राप्त होने के कारण निरीक्षण सम्भव नहीं था । पुन: विपक्षी ने 2-9-94 को एक पत्र लिखा जिसमें विपक्षी ने 10-9-94 को दिनांक 14 व 15-9-94 को निरीक्षण के लिए निर्देशित किया, यह पत्र उसे 16-9-94 को प्राप्त हुआ जिसके सम्बन्ध में मैंने 17-9-94 को वस्तु-स्थिति से अवगत करवा दिया, इन सभी पत्रों की प्रतियां अप्रार्थी ने प्रस्तुत की है । उक्त पत्राचार से यह स्पष्ट है कि बैंक द्वारा जो प्रलेख उपलब्ध नहीं कराये जा सकते थे उसका समुचित कारण बताया गया व दस्तावेजों के निरीक्षण हेतु पर्याप्त अवसर प्रार्थी को दिया गया । प्रार्थी का यह कथन उचित प्रतीत नहीं होता कि पत्र दिनांक 13-8-94 यदि 18-8-94 को मिलना माना जाए तब भी पर्याप्त अवसर नहीं मिला है । इस अवसर पर प्रार्थी ने उपयोग नहीं किया व जांच प्रक्रिया प्रारम्भ किये जाने से पूर्व अभिलेखों के निरीक्षण हेतु कई पत्र अप्रार्थी बैंक ने प्रार्थी को लिखे जिनका

मिलना स्वयं प्रार्थी स्वीकार करता है परन्तु हर बार उसने यही जवाब दिया है कि उसे पत्र या तो उसी दिन मिला या निरीक्षण की दिनांक निकल जाने के बाद मिला प्रार्थी ने अपनी साक्ष्य में यह भी कहा है कि जब वह 16-12-94 को निरीक्षण करने पहुंचा तो उसे निरीक्षण नहीं करवाया गया व उसके साथ मारपीट का प्रयास किया गया । इस्तगासा प्रस्तुत करने से यह तथ्य सिद्ध नहीं होता कि निरीक्षण हेतु दस्तावेज उपलब्ध नहीं कराये गये हों । 16-12-94 को जांच अधिकारी ने रिकार्ड निरीक्षण की अनुमति दी या नहीं याद नहीं होना प्रार्थी ने अपनी साक्ष्य में कहा है । इसी प्रकार 16-12-94 को दस्तावेज निरीक्षण हेतु मैनेजर ने उसे रिलीव किया था यह स्वीकार किया है । इस प्रकार जांच अधिकारी द्वारा नियुक्त किये जाने से पहले अप्रार्थी बैंक द्वारा पर्याप्त अवसर जवाब देने हेतु दिया जाना व दस्तावेजों के निरीक्षण हेतु भी पर्याप्त समय दिया जाना सिद्ध होता है । प्रार्थी यह सिद्ध नहीं कर पाया है कि उसे इस हेतु समुचित अवसर नहीं दिया गया । ऐसी स्थिति में जांच अधिकारी नियुक्त किया जाना अनुचित नहीं माना जा सकता । जांच अधिकारी ने स्वीकरत: जांच आरम्भ करने के पहले पुन: प्रलेखों के निरीक्षण हेतु प्रार्थी को समय दिया है कि परन्तु इसके बावजूद भी कोई जवाब प्रार्थी द्वारा प्रस्तुत नहीं किया । प्रार्थी द्वारा जो इस संबंध में स्पष्टीकरण दिया गया है वह उचित प्रतीत नहीं होता । ऐसी स्थिति में दस्तावेजों की प्रतियां उपलब्ध करवाने या निरीक्षण हेतु समुचित अवसर प्रदान नहीं करने के आधार पर विभागीय जांच का अनफेयर होना नहीं माना जा सकता ।

8. प्रार्थी ने जांच के अनफेथ होने के सम्बन्ध में दूसरा तर्क यह लिया है कि जांच अधिकारी पूर्वाग्रह से ग्रसित थे और इसका कारण उसने प्रार्थी यूनियन से संबंधित होना बताया है अपने आपमें यह कारण ऐसा नहीं है जिससे अधिकारी का पूर्वाग्रह से ग्रसित होना माना जा सके । जब तक जांच में अपनाई गई प्रक्रिया या दी गई फाईन्डिंग इस प्रकार पूर्वाग्रह से परिलक्षित नहीं होती है जो प्रक्रिया अपनाई गई है उससे पूर्वाग्रह मानने का कोई आधार प्रतीत नहीं होता ।

9. जांच के अनफेयर होने के सम्बन्ध में अन्य तर्क प्रार्थी द्वारा यह लिया गया है कि उसे उसके द्वारा चयनित बचाव प्रतिनिधि श्री डी. के. परिहार को बचाव प्रतिनिधि नियुक्त करने की अनुमति नहीं दी गई । इस संबंध में अप्रार्थी बैंक का पत्र दिनांक 29-12-1994 द्वारा उसे यह सूचित किया है कि एडवोकेट को बचाव प्रतिनिधि नियुक्त करने की अनुमति नहीं दी जा सकती वह किसको बचाव प्रतिनिधि नियुक्त किया जा सकता है इसकी सूचना भी उसको दी गई । प्रार्थी ने जो बैंक कर्मचारियों लागू द्विपक्षीय समझौते के क्लोज 2.17 की प्रति "ए मुन्युअल ऑन डिसीप्लनेरी" ए क्रम एण्ड रिलेटेड मैटर्स से प्रस्तुत की है के अनुसार विभागीय कार्यवाही में एडवोकेट बैंक की अनुमति से ही नियुक्त किया जा सकता है व अनुमति नहीं होने की स्थिति में रजिस्टर्ड ट्रेड यूनियन का प्रतिनिधि या ऐसा अन्य वह व्यक्ति जो क्लॉज ए.बी.सी. में बताया गयाा है द्वारा प्रतिनिधित्व किया जा सकता है जिस पर स्वीकारत: प्रार्थी ने बचाव प्रतिनिधि श्री एल. आर. गौड़ को बनाया । प्रार्थी स्वयं द्वारा इस पत्र की पालना में अपना प्रस्तावित प्रतिनिधि बदलकर लगा लिये जाने से यह नहीं माना जा सकता कि इस कारण से उसे कोई प्रिज्युडिस हुआ है या उसे बचाव का समुचित अवसर नहीं मिला हो ।

10. विभागीय जांच के अनफेयर होने के सम्बन्ध में एक अन्य तर्क प्रार्थी द्वारा यह लिया गया है कि फौजदारी कार्यवाही लम्बित होने के दौरान विभागीय जांच नहीं की जा सकती थी । प्रार्थी का यह तर्क माननीय उच्चतम न्यायालय के निर्णय ए. आई. आर. 1989 एस. सी. 1416 कैप्टन एम.पॉल बनाम भारत गोल्डमाईन व 2004 एल. एल. जे. 769 में दिये गये निर्णय को देखते हुए माने जाने योग्य नहीं है । इन निर्णयों के अनुसार फौजदारी कार्यवाही व विभागीय जांच साथ में चल सकती है ।

11. विभागीय जांच के अनफेयर होने के सम्बन्ध में एक अन्य तर्क प्रार्थी द्वारा यह लिया गया है कि उसे जिरह का समुचित अवसर नहीं दिया गया । प्रार्थी ऐसी कोई साक्ष्य प्रस्तुत नहीं कर पाया है कि जिससे यह माना जा सके कि अप्रार्थी बैंक द्वारा उसे जिरह की अनुमति नहीं दी गई हो । अत: यह माने जाने का कोई आधार नहीं है कि इस कारण वह अपना समुचित बचाव नहीं कर सका हो । अप्रार्थी बैंक की ओर से जो शपथ-पत्र प्रस्तुत किये हैं उनके अनुसार प्रार्थी को जिरह का पर्याप्त अवसर दिया गया था । अत: प्रार्थी का यह तर्क माने जाने योग्य नहीं है । प्रार्थी ने 1995 लेब आई. सी. 2133 के आधार पर यह कहा है कि अनुशासनात्मक अधिकारी को पर्याप्त कारण दण्ड दिये जाने से पहले बनाने चाहियें । इस प्रकरण में अनुशासनात्मक अधिकारी द्वारा पर्याप्त कारण नहीं बताये गये हों, यह नहीं माना जा सकता ।

12. प्रस्तुत साक्ष्य के आधार पर जांच अधिकारी ने अपनी विस्तृत जांच रिपोर्ट दिनांक 29-9-95 को प्रस्तुत की है जिसकी प्रति अनुशासनात्मक अधिकारी डिवीजनल मैनेजर द्वारा प्रार्थी श्री राजेन्द्र भण्डारी को दी गई व इसके विरुद्ध रिप्रजेन्टेशन का पर्याप्त अवसर दिया गया । इसके पश्चात् अनुशासनात्मक अधिकारी द्वारा आरोप-पत्र में लगाये गये चारों आरोप सिद्ध माने जाकर प्रत्येक आरोप के लिए "नैक्स्ट लोवर स्टेज" पर दो साल के लिए वेतन कम किया जाकर देने का दण्ड इम्पोज किया गया । जांच अधिकारी द्वारा जो रिपोर्ट दी गई है इसमें प्रस्तुत साक्ष्य का उचित प्रकार से एप्रीशिऐशन किया गया है व जो फाईन्डिंग दी गई है वह प्रस्तुत साक्ष्य पर आधारित होकर उचित प्रतीत होती है । इसी प्रकार अपीलेट औथोरिटी का भी जो आदेश है वह साक्ष्य एवं जांच रिपोर्ट पर आधारित है एवं यह नहीं माना जा सकता कि यह स्पीकिंग ओर्डर नहीं है ।

13. इस प्रकार प्रार्थी ने विभागीय जांच के दूषित होने के सम्बन्ध में जो कारण बताये हैं वे उचित प्रतीत नहीं व जांच बैंक कर्मचारियों पर लागू समझौता व नियमों के अनुसार किया जाना सिद्ध हुआ । ऐसी स्थिति में जांच के अनफेयर होने के आधार पर प्रार्थी किसी अनुतोष का अधिकारी नहीं है ।

14. जहाँ तक जांच के बाद दिये गये दण्ड के डिस्प्रपोंशनेट होने का प्रश्न है जो दण्ड दिया गया है वह दो साल के लिए वेतन को नैक्स्ट लोवर स्टेज पर दिये जाने का है । विभागीय जांच के दौरान जो आरोप प्रार्थी के विरुद्ध सिद्ध हुए हैं वे गम्भीर प्रकृति के है व चूंकि बैंक का कार्य दिन प्रतिदिन निपटाये जाने का होता है ऐसी स्थिति में मिसकण्डक्ट की गम्भीरता को देखते हुए जो दण्ड दिया गया है उसे डिस्प्रपोंशनेट होना नहीं माना जा सकता । इस प्रकार इस आधार पर भी प्रार्थी किसी अनुतोष का अधिकारी नहीं है ।

15. उपरोक्त विवेचन के आधार पर इस रेफरेन्स का उत्तर निम्न अवार्ड की टर्म्स में दिया जाता है ।

अवार्ड

16. यू. को. बैंक जोधपुर के मैनेजमेन्ट द्वारा प्रार्थी पर इम्पोज किया गया दण्ड उचित व वैध था । अतः प्रार्थी किसी अनुतोष का अधिकारी नहीं है ।

17. इस अवार्ड को प्रकाशनार्थ केन्द्रीय सरकार को प्रेषित किया जावे ।

18. यह अवार्ड आज दिनांक 08-08-2006 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया ।

पुष्पेन्द्रसिंह हाड़ा, न्यायाधीश

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4767.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या 7/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2006 को प्राप्त हुआ था।

[सं. एल-12012/363/96-आई आर(बी.-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4767.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/98) of the Industrial Tribunal, KOTA as shown in the Annexure in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 16-11-2006.

[No. L-12012/363/1996-IR (B-II)]

RAJINDER KUMAR, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राज.

पीठासीन अधिकारी- के.के. गुप्ता, आर. एच. जे. एस.

रेफ्रेन्स प्रकरण क्रमांकः औ. न्या.-7/98

दिनांक स्थापितः 19-5-98

प्रसंगः भारत सरकार, श्रम मंत्रालय नई दिल्ली के आदेशांक एल-12812/363/96/आई. आर. (बी-II) दिनांक 20/29-8-97

रेफ्रेन्स अन्तर्गत धारा 10(1)(घ)

औद्योगिक विवाद अधिनियम, 1947

मध्य

नरेन्द्र सिंह चन्द्रावत पुत्र श्री औंकार सिंह चन्द्रावत द्वारा श्री डी. आर. द्विवेदी, 117 प्रतापनगर, दादाबाड़ी, कोटा ।

--प्रार्थी श्रमिक

एवं

शाखा प्रबन्धक, केनरा बैंक, 48-सी कल्याण सदन, सरस्वती कालौनी, कोटा ।

--अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि- श्री डी.आर. द्विवेदी

अप्रार्थी नियोजक की ओर से प्रतिनिधि- श्री सुरेश माथुर

अधिनिर्णय दिनांकः 27-10-2006

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपने उक्त प्रासंगिक आदेश दि 20/29-8-97 द्वारा औद्योगिक विवाद अधिनियम 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बंधित किया जावेगा) की धारा 10-(1)(घ) के अन्तर्गत सम्प्रेषित निम्न रेफ्रेन्स इस न्यायाधिकरण को दि. 19-5-98 को अधिनिर्णयार्थ प्राप्त हुआ है:-

"Whether the action of Canera Bank, Kota & Circle Office Parl. Street, N.D. in terminating the services of Sh. Narendra Singh after having put in 248 days services w.e.f. 18-2-95, is legal and Justified? If not what relief the concerned workman is entitled to and from what date?"

2- रेफ्रेन्स न्यायाधिकरण में प्राप्त होने पर पंजीबद्व उपरान्त पक्षक्षारों को सूचना विधिवत रूप में जारी की गयी।

3- प्रार्थी श्रमिक नरेन्द्र सिंह चन्द्रावत की ओर से क्लेम स्टेटमेन्ट प्रस्तुत कर संक्षेप में यह अभिकथित किया गया है कि उसे अप्रार्थी बैंक, मण्डल कार्यालय जयपुर का पत्र दि. 14-6-93 प्राप्त होने पर, डेलीवेजर के रिक्त पद हेतु साक्षात्कार उपरान्त बिना कोई नियुक्ति-पत्र दिये दि. 14-8-93 से बैंक शाखा प्रबन्धक, कोटा में डयूटी पर लिया गया। दि 8-9-93 को अप्रार्थी बैंक के सीनियर मैनेजर, स्टाफ सेक्शन (वर्क मैन) दिल्ली सर्किल द्वारा पत्र भेजकर प्रार्थी को सूचना दी गयी कि उसे अप्रार्थी बैंक में सब-स्टाफ की लीव वेकेन्सी के दौरान डेलीवेजर के रूप में चयनित कर लिया गया है तथा निर्देशित किया गया कि वह प्रत्येक कार्य दिवस पर कार्यालय समय के आधे घन्टे पूर्व कोटा शाखा पर उपस्थित हो। जबकि वास्तविकता यह है कि अप्रार्थी बैंक शाखा में कोई लीव वेकेन्सी नहीं थी, ना कोई अस्थायी कार्य था बल्कि केवल स्थायी पद रिक्त था तथा प्रार्थी को 14-8-93 से ही स्थायी पद पर लगाया गया था व स्थायी पद का ही कार्य लिया गया था। शास्त्री अवार्ड के पैरा सं. 508 से बैंक कर्मचारियों का वर्गीकरण किया गया है जिससे केवल चार प्रकार की श्रेणियां हेतु इनके अतिरिक्त अन्य कोई श्रेणी नहीं हो सकती, इसमें डेलीवेजर की कोई श्रेणी नहीं है। अस्थायी कर्मचारियों से लीव वेकेन्सी में नियुक्त किये गये कर्मचारियों को भी प्रथम द्विपक्षीय समझौते में सम्मिलित कर लिया गया था, किन्तु इसी समझौते के क्लॉज 20.8 के अनुसार कोई भी अस्थायी कर्मचारी तीन माह से अधिक अवधि के लिए सेवा में नहीं रखा जा सकता था। इससे स्पष्ट है कि प्रार्थी को स्थायी पद के कार्य के लिए ही नियोजित किया गया था और उससे 17-2-95 तक स्थायी पद का कार्य लिया गया, किन्तु 18-2-95 को उसे डयूटी पर नहीं लिया गया और अचानक उसकी सेवाएं समाप्त कर दी गयीं। अधिनियमान्तर्गत कोई नोटिस अथवा नोटिस वेतन व मुवावजा आदि नहीं दिया गया, ना वरिष्ठता सूची का प्रकाशन किया गया, ना कोई

पूर्व स्वीकृति ली गयी जोकि धारा 25-एफ, जी व एन का उलंघन है। अन्त में प्रार्थना की गयी है कि उसे उक्त प्रकार से सेवा से पृथक किया जाना अनुचित एवं अवैध घोषित करते हुए पिछले सम्पूर्ण वेतन व समस्त सेवा लाभों सहित सेवा में पुर्नस्थापित किये जाने का अनुतोष प्रदान किया जावे।

4. अप्रार्थी नियोजक की ओर से उक्त क्लेम जवाब प्रस्तुत करते हुए प्रतिवाद-स्वरूप यह अभिकथित दिया गया है कि अप्रार्थी बैंक दैनिक वेतन के आधार पर व्यक्तियों को रखता है जोकि स्थायी अधीनस्थ कर्मचारी के अवकाश के कारण रिक्त स्थान पर काम करते हैं। प्रार्थी 14-8-93 से दैनिक वेतन भोगी के रूप में एमपेनल हुआ था तथा दि. 17-2-95 के पश्चात प्रार्थी ने स्वयं बैंक शाखा में उपस्थिति दर्ज कराना बन्द कर दिया। दैनिक वेतन भोगी पेनल में एमपेनलमेन्ट में ना तो नियुक्ति के लिए कोई प्रस्ताव है, ना ही नियुक्ति के लिए कोई वचनबद्धता है। वर्ष 1994-95 में बैंक शाखा को रोजगार कार्यालय ने अनुसूचित जनजाति के उम्मीदवारों की सूची उपलब्ध करायी जिसमें हरीशंकर को नियुक्ति के लिए प्रस्तावित किया गया जिस नियुक्ति के खिलाफ प्रार्थी ने जिला न्यायालय, कोटा में वाद दाखिल किया जो उसके द्वारा दि. 10-2-95 को वापस ले लिया गया। दैनिक वेतन भोगी जो कि एमपेनल किये जाते हैं, बैंक कर्मचारी नहीं होते, उनका कार्य का अनुबंध प्रतिदिन कार्यालय समय के बाद खत्म हो जाता है और उन पर देसाई, शास्त्री अवार्ड व द्विपक्षीय समझौता लागू नहीं होता। प्रार्थी को कभी भी स्थायी पद पर नियुक्त नहीं किया गया, उसने स्वयं 18-2-95 से कार्य पर आना बन्द कर दिया। प्रार्थी ने एक वर्ष में 240 दिन कार्य किया या नहीं, इस विवाद में प्रासांगिक नहीं है, क्योकि वह दैनिक वेतन भोगी है और उसका नाम अभी भी पैनल में है, इस कारण अधिनियम की धारा 25-एफ के प्रावधान उस पर लागू नहीं होते। अन्त में प्रार्थी का क्लैम निराधार व बेबुनियाद होने से सव्यय निरस्त किये जाने की प्रार्थना की गयी है।

5. साक्ष्य में प्रार्थी की ओर से स्वयं का तथा अप्रार्थी नियोजक बैंक की ओर से श्री सुरेश चन्द्र, गुप्ता, शाखा प्रबन्धक, अप्रार्थी बैक, कोटा का शपथ-पत्र प्रस्तुत कर परीक्षित करवाया गया है। पक्षकारों की ओर से प्रलेखीयसाक्ष्य भी प्रस्तुत की गयी है।

6. बहस पक्षकारी के विद्वान प्रतिनिधिगण की सुनी गयी, पत्रावली, उपलब्ध साक्ष्य व सामग्री का ध्यानपूर्वक परिशीलन दिया गया।

7. प्रार्थी ने अपने तर्कों में, क्लेम स्टेटमैन्ट में वर्णित तथ्यों को ही दोहराया है। अप्रार्थी ने भी जवाब में वर्णित तथ्यों की ही पुनरावृत्ति की है। प्रार्थी प्रतिनिधि ने स्वीकार किया है कि प्रार्थी को, अप्रार्थी बैक द्वारा दिनाक 19-1-2002 से स्थायी नौकरी पर सेवा से रख लिया गया है, अत: सेवा में पूर्नस्थापना की सहायता प्राप्त हो चुकी है। उनका कथन है कि उसे पिछला वेतन व सेवा की निरन्तरता दिलायी जाए। अप्रार्थी का भी यह कथन है कि प्रार्थी की पुन: नियोजन दे दिया गया है तो प्रार्थी को उक्त अनुसार संशोधन करवाना चाहिए था जो नहीं करवाया गया है और उस आधार पर उसे अन्य अनुतोष नहीं दिलाया जा सकता। उनका यह कहना है कि प्रार्थी की लीव वेकेन्सी में दैनिक वेतन भोगी के रूप से नियुक्ति की गयी थी और दैनिक वेतन भोगी कर्मचारियों का पेनल बनाया गया था। जब-जब बैंक को कर्मचारियों की आश्यकता होती थी, वो उनमें से सेवा में बुला लिया करते थे और प्रार्थी को दिनांक 18-2-95 को भी सेवा से मुक्त नहीं किया गया था, उसका पेनल में नाम था। यदि पेनल में नाम नहीं होता तो प्रार्थी को जब स्थायी पद रिक्त हुआ तब बुलाकर उसकी नियमित नियुक्ति हेतु प्रक्रिया अपनाकर नियुक्ति नहीं की जाती। प्रार्थी द्वारा प्रदर्शी एम. 4 की शर्तों को लिखित में स्वीकार किया गया है, उसने भी प्रथम शर्त यह थी कि "आपको प्रतिदिन 9.15 पर शाखा-प्रबन्धक को रिपोर्ट करना होगा, यदि आपकी सेवा की आवश्यकता होगी तो आपको उस दिन कार्य पर रख लिया जावेगा।" प्रार्थी को रजिस्टर्ड पत्र द्वारा भी सूचित किया गया कि वो कार्यालय में उपस्थित हो, किन्तु उसने उपस्थिति नहीं दी। इस प्रकार जब उसे हटाया ही नहीं गया तो छटनी का कोई प्रश्न ही पैदा नहीं होता और वह कोई सहायता प्राप्त करने का अधिकारी नही हैं।

8. शपथ-पत्र में प्रार्थी ने क्लेम में वर्णित तथ्यों को ही दोहराया है और यह भी कहा है कि वह स्थायी पद पर कार्य कर रहा था, किन्तु जिरह में उसने यह कथन दिया है कि यह बात सही है कि जब बैंक का स्थाई कर्मचारी छुट्टी पर होता था, तब उससे काम लिया जाता था। उसने आगे यह भी कहा है कि बैंक ने स्थाई पदों पर नियुक्ति नहीं की थी, स्थाई पद पर भी दैनिक वेतन भोगी कर्मचारियों से काम लिया जाता था और 18-2-95 के बाद भी ऐसे कर्मचारी लगाये हुए थे। उसने यह भी स्वीकार किया है कि डेली वेजेज वालों का रजिस्टर अलग था, उससे उसका भुगतान होता था। यह बात सही है कि स्थाई कर्मचारियों और दैनिक वेतन भोगी कर्मचारियों की उपस्थिति पंजिकाएं अलग-अलग थीं। इससे भी प्रार्थी का यह कथन कि बैंक में कोई स्थाई कर्मचारी नहीं था, मिथ्या हो जाता है, क्योंकि उसका स्वयं में यह कथन है कि उसकी स्वयं की उपस्थिति पंजिका अलग थी। उसने कहा है कि उसे जो नियुक्ति-पत्र दिया वह प्रदर्श डब्ल्यू 2 प्रस्तुत किया है, उसमें भी प्रार्थी को दैनिक वेतन भोगी के रूप में लीव वेकेन्सी पर रखने का स्पष्ट रूप से अंकन किया गया है, उसको वह स्वयं ही नियुक्ति-पत्र मानता है। यह सही है कि यह पत्र दिनांक 8-9-93 का दिया हुआ है और उसे 14-6-93 के पत्र द्वारा बुलाया गया था। जब प्रार्थी स्वयं के कथन व स्वीकारोक्ति से यह साबित होता है कि वह दैनिक वेतन भोगी कर्मचारी के रूप में लीव वेकेन्सी पर कार्य हेतु रखा गया था जिसकी कि पुष्टि पत्र प्रदर्श डब्ल्यू 2 से भी होती है जो कि उसने स्वयं ने प्रस्तुत किया है तो इस सम्बन्ध में अन्य साक्ष्य को देखने की आवश्यकता नहीं है। प्रार्थी के प्रतिनिधि का यह कथन है कि उसकी स्थायी पद के विरुद्ध नियुक्ति की गयी थी, किन्तु यह उसकी साक्ष्य से साबित नहीं है। उसने स्वयं ने ही अपने क्लेम में यह स्पष्ट रूप से कहा है कि उसे दैनिक वेतन भोगी के रिक्त पद हेतु साक्षात्कार के लिए बुलाया गया था। अप्रार्थी साक्षी श्री सुरेशचन्द्र गुप्ता, प्रबन्धक ने प्रदर्श एम. 1 लगायत एम 2 को अपनी साक्ष्य में साबित किया है। प्रदर्श एम. 4 प्रार्थी को नियुक्ति के पूर्व दिया गया था, उसमें स्पष्ट रूप से प्रार्थी की सेवाओं का उपयोग दैनिक वेतन भोगी के रूप में करने का उल्लेख है एवं नियुक्ति की शर्तों का भी उल्लेख किया गया है और शर्त सं. 1 में स्पष्ट रूप से यह अंकित है कि "आपको प्रतिदिन 9.15 पर शाखा-प्रबन्धक को रिपोर्ट करनी होगी, यदि आपकी सेवाओं की आवश्यकता होगी तो आपको उस दिन कार्य पर रख लिया जावेगा।" इससे भी यह निष्कर्ष निकलता है कि प्रार्थी को दैनिक वेतन भोगी कर्मचारी के रूप में रखा गया था और

लगातार सेवायें लेने के लिए उसकी नियुक्ति नहीं की गयी थी । जब-जब भी बैंक को उसकी सेवाओं की आवश्यकता होगी, तब-तब उसे रख लिया जायेगा । इसमें अन्य शर्तों के साथ-साथ यह भी स्पष्ट रूप से अंकन है कि उनकी सेवायें पूर्ण रूप से अस्थायी होंगी और उन्हें कभी भी बैंक द्वारा लिये जाने से इन्कार किया जा सकता है और उसके लिए कोई कारण बताना जरूरी नहीं होगा । इस पत्र की पुश्त पर प्रार्थी नरेन्द्र सिंह के द्वारा लिखित में यह भी स्वीकार किया गया है कि उसने यह अच्छी तरह से पढ़ लिया है तथा उसे उक्त लिखित सारी शर्तें मन्जूर हैं और पत्र में चाहे गये प्रपत्र आदि आपकी सेवा में पेश कर देगा । इससे यह निष्कर्ष निकलता है कि प्रार्थी को दैनिक वेतन भोगी कर्मचारी के रूप में पत्र में वर्णित शर्तों के आधार पर रखा गया था जिसे उसने स्वीकार कर लिया था । पत्र प्रदर्श एम. 2 के अवलोकन से यह पाया जाता है कि प्रार्थी को दिनांक 24-3-95 को सूचित किया गया था कि उसका नाम अभी तक भी दैनिक वेतन भोगी के पैनल में है व नियमित अधीनस्थ कर्मचारी की अवकाश की रिक्तता पर उसे कार्य पर लगाया जायेगा, उसका नाम समाप्त नहीं किया गया है । इसी तरह से प्रदर्श एम. 5 में भी यह सूचित किया गया है कि उसकी सेवायें बरकरार हैं, उसका नाम हटाया नहीं गया है तथा प्रदर्श एम. 6 के द्वारा प्रार्थी को यह सूचित किया गया कि उसे दिनांक 1-6-95 को यह कहा गया था कि वह 2 एवं 3 जून, 95 को दैनिक वेतन भोगी के रूप में अपनी सेवायें शाखा को दें, किन्तु वह उपस्थित नहीं हुआ । इस पत्र के जरिये रजि. ए.डी. भेजा गया जिसके सम्बन्ध में प्रदर्श एम. 7 लगा एम. 10 प्रस्तुत किये गये हैं, उनके प्रदर्श एम. 9 प्रार्थी की प्राप्ति रसीद है । इस तरह से सम्पूर्ण साक्ष्य के अवलोकन से यह निष्कर्ष निकलता है कि प्रार्थी की नियुक्ति, दैनिक वेतन भोगी कर्मचारी के रूप में ही हुई थी, ना कि किसी स्थायी पद पर ।

9. प्रार्थी का यह भी कथन रहा है कि शास्त्री अवार्ड में केवल कर्मचारियों की चार श्रेणियां हैं और दैनिक वेतन भोगी कर्मचारियों की कोई श्रेणी नहीं है । अस्थायी कर्मचारी में लीव वेकेन्सी में नियुक्त किये गये कर्मचारियों को भी शामिल कर लिया गया है और उन्हें तीन माह से अधिक की अवधि के लिए नियुक्त नहीं किया जा सकता । जबकि अप्रार्थी का कथन है कि प्रार्थी कर्मचारी, उन श्रेणियों में नहीं आता जिन पर शास्त्री अवार्ड व द्विपक्षीय समझौता लागू होता है । उच्चतम न्यायालय द्वारा सज्जन सिंह बनाम भारतीय संघ एवं अन्य रिट पिटि. नं. 281/86 में, बैंक में दैनिक वेतन भोगी के पैनल रखरखाव की कार्यप्रणाली तथा रिक्त स्थान पर कार्य पर रखने को सही ठहराया गया है जिसकी पुष्टि उत्तरप्रदेश राज्य बनाम अजयकुमार (1997 सीएलआर 656) वाले मामले में भी की गयी है । मेरे समक्ष शास्त्री अवार्ड व द्विपक्षीय समझौता, दोनों पक्षों की ओर से प्रस्तुत नहीं किया गया है । इस प्रकार यह निष्कर्ष नहीं निकाला जा सकता कि अस्थायी कर्मचारी, लीव वेकेन्सी में तीन माह से अधिक कार्यरत रहने पर शास्त्री अवार्ड अनुसार स्थायी मान लिये जावेंगे ।

10. उपरोक्त विवेचन से यह तो स्पष्ट ही है कि प्रार्थी को प्रदर्श एम. 4 की शर्तों पर नियुक्त किया गया था जिसे उसने उसकी पुश्त पर लिखित में स्वीकार किया था और उसको उसमें अस्थायी दैनिक वेतन भोगी के रूप में नियुक्त किया गया था । पत्र प्रदर्श एम. 4 में वर्णितानुसार उसे प्रतिदिन 9.15 पर शाखा बैंक में उपस्थित होना था और आवश्यकता होने पर ही कार्य पर रखे जाने की शर्त थी । उक्त विवेचन स्वरूप में यह पाता हूं कि प्रार्थी को जब 18-2-95 को सेवा से मुक्त ही नहीं किया गया और 2 व 3 जून, 95 को सूचना उपरान्त भी उसके उपस्थित नहीं होने बाबत उसे रजि. पत्र प्रदर्श एम. 6 के द्वारा सूचित भी किया गया तथा उसका नाम दैनिक वेतन भोगी कर्मचारियों के पैनल में होने के कारण उसे नियमित चयन प्रक्रिया अपनाकर दिनांक 19-1-02 से पुनः नियुक्ति दे दी गयी तो ऐसी स्थिति में अधिनियम के कोई भी प्रावधान की अवहेलना नहीं होने से प्रार्थी किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

परिणामतः भारत सरकार, श्रम मंत्रालय द्वारा सम्प्रेषित रेफ्रेन्स को अधिनिर्णित कर इस प्रकार उत्तरित किया जाता है कि प्रार्थी श्रमिक यह साबित नहीं कर पाया है कि उसे अप्रार्थी नियोजक शाखा प्रबन्धक, केनरा बैंक 48-सी कल्याण सदन, सरस्वती कॉलोनी, कोटा द्वारा दिनांक 18-2-95 से सेवामुक्त किया गया हो, बल्कि उसका नाम दैनिक वेतन भोगी कर्मचारियों के पेनल में होने से उसे नियमित चयन प्रक्रिया अपनाकर अप्रार्थी बैंक शाखा द्वारा दि. 19-1-02 से पुनः नियुक्ति दी जा चुकी है, अतः उसे अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से वह किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

के. के. गुप्ता, न्यायाधीश

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4768.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 264/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2006 को प्राप्त हुआ था ।

[सं. एल-12012/245/1989-आई आर (बी-III)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4768.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 264/89) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on 16-11-2006.

[No. L-12012/245/1989-IR (B-III)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/264/89

SHRI C. M. SINGH, : Presiding Officer

The General Secretary,
Bank of Indore Karmachari Sangh,
Central Office, 37,
Bakshi Gali, Indore. —Workman/Union

Versus

The Regional Manager-1,
State Bank of Indore,
Zonal, Office, 163,
Kanchan Bagh,
Indore —Management

AWARD

Passed on this 6th day of October, 2006

1. The Government of India, Ministry of Labour *vide* its notification No. L-12012/245/89-IR (B-III) dated 12/13-12-89 has referred the following dispute for adjudicaiton by this tribunal :—

> "Whether the action of the management of the RM-I, State Bank of Indore, Indore in not providing employment to Shri Parasmal Surana, Peon, after the 30-6-1978, and whether his said termination is justified? If not, to what relief the workman is entitled for?"

2. The case of workman Shri Parasmal Surana in brief is as follows. He was originally appointed by the Branch Manager, University Branch, Indore for 76 days i.e. 3-12-77 to 16-2-78 in the subordinate cadre against a permanent vacancy. The work of peon against a permanent vacancy was also taken from him from 27-2-78 to 27-3-78 and an appointment letter for this period was also issued but he was not paid his salary for the period mentioned above. As a result of service put in by the workman, the Branch Manager, Pardeshipura, Indore branch appointed him permanently in the subordinate cadre w.e.f. 29-4-78. On 1-7-78, his services were unauthorisely abruptly terminated by the Branch Manager without assigning any reason. The aforesaid act of the Branch Manager is violative of the provisions of Shastri award, bipartite settlements, Industrial dispute act as also against Industrial dispute No. 180 of 1981 decided by Shri R.B. Shrivastava, Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Kanpur in the matter of Industrial Dispute between Shri Shiv Narayan Dixit and State Bank of Indore, Kanpur. *Vide* his representation dated 29-11-87, he approached the management the Managing Director of the Bank for his reinstatement with all consequential benefits. A reminder was also sent by him vide his letter dated 16-6-88. On receipt of letter dated 16-6-88, the Manager Personnel Division, State Bank of Indore, Head office Indore vide his letter No. 10816 dated 28-6-88 informed that letter dated 16-6-88 was not received at their end. Accordingly vide his letter dated 1-7-88, he again forwarded copy of letter dated 16-6-88, but to no avail. He also took up the matter with the Personnel Division, State Bank of Indore, head office, Indore vide letter No. 103/88 dated 12-8-88 but no reply was received. In view of the above, the action of the management of the State Bank of Indore in terminating the services of the workman w.e.f. 1-7-78 is not justified and therefore he is entitled to be reinstated with full back wages and other consequential benefits.

3. The management, Regional Manger-(I), State Bank of Indore, Indore contested the reference and filed their Written Statement. Their case in brief is as follows. The workman was engaged on 3-12-1977 to 16-2-1978 by the University Campus branch, Indore of the management purely on casual basis. The workman neither worked during the period *i.e.* 27-2-78 to 27-3-78 nor any letter of appointment was issued to him. He was engaged in Pardeshipura branch, Indore as a peon on 29-4-78 and he worked at the said branch only for 63 days i.e. upto 30-6-78. This engagement was casual and the workman does not acquire any right of employment. The nature of engagement on casual basis is such that he has to the work till the work is available and therefore as soon as the work was over for which the workman was engaged, he was not continued to work on casual basis. The action of the management does not infringe any provision of Shastri Award, bipartite settlement and I D.Act. The reference made to a case of Shri Shiv Narayan Dixit *versus* State Bank of Indore is not relevant because the said judgement is set-aside by the High Court of Allahabad in Writ Petition No. 953/86 dated 23-11-96. The averment made that various representations were made by the workman are of no consequence because the management cannot make any permanent appointment without calling for the name of eligible candidates from the employment exchange and without judging their suitability. All this have not happened and therefore the workmen working for few days was of casual nature and does not amount to permanent employment. This casual engagement does not confer any right in favour of the workman to hold the post under any agreement, statement or law. The claim of the workman is stale. He approached the Assistant Labour Comissioner (C) Bhopal on 3-12-88 *i.e.* after 10 years and 6 months and therefore, such a claim is not maintiainable and no relief can be granted to the workman on stale matter. In view of the above, the workman is not entitled to any relief.

4. Workman Shri Parasmal Surana in order to prove his case examined himself and his witness Shri Govind Sawan. The management in order to defend the reference examined their witness Shri Arvind Joshi, Retired Bank employee.

5. The workman also filed certain photostat copies, a typed paper indicating details of temporary peons appointed in the Bank at University Campus branch and perhaps the copy of extract from 1st bipartite settlement dated 19-10-1966. The management filed photostat copy of settlement under Sec. 18(3) of the Industrial Dispute Act 1947 Form- "H". These doeuments shall be referred in the body of this award where the need be.

6. Both the parties have filed their written arguments but the written argument filed on behalf of management shall not be considered because it has been filed by a legal practitioner and vide order dated 5-10-95 the management has been restrained to be represented by a legal practitioner. I have very carefully gone through the written argument filed on behalf of the workman and the entire evidence on record.

7. The workman has averred in the statement of claim that he was originally appointed by the Bank Manager, University Campus Branch, Indore for 76 days i.e. from 3-12-1977 to 16-2-1978 in subordinate cadre against the permanent vacancy. Against the above, the pleadings of the management is that the workman was engaged on 3-12-1977 to 16-2-1978 by the University Campus Branch, Indore purely on casual basis and hence the averment of the workman that he was appointed in a permanent vacancy is false. In his affidavit workman Shri Parasmal Surana deposed that he worked as peon against the permanent vacancy in University Branch of State Bank of Indore w.e.f. 3-12-1977 to 16-2-1978. On being cross-examined, the witness deposed that an appointment letter was issued to him for the period 3-12-1977 to 16-2-1978 by the management. Regarding the said appointment letter, the workman deposed that he has perhaps misplaced it somewhere and now it is not traceable. Thus the witness has failed to file the appointment letter which could be indicative of the fact if the workman was employed for the above period against permanent vacancy. Workman's witness Shri Govind Sawan in his affidavit deposed that he worked in the University Branch of the State Bank of Indore w.e.f. 3-12-1977 to 16-2-1978 and thereafter 27-2-78 to 27-3-1978 as peon. Regarding the workman's case, this witness deposed in his affidavit that Shri Surana had been working in the Bank as peon and his work and conduct was good. Thus witness is silent regarding the period the workman was employed in the University Branch of the management.

8. The workman filed photostat copy of certificate dated 23-2-1979 purporting to be issued by the Branch Manager, University Campus Branch, Indore to indicate that he worked in the said branch for 76 days i.e. 3-12-1977 to 16-2-1978 as temporary peon. During the evidence of his cross examination workman Shri Parasmal Surana deposed that for the period of appointment i.e. 3-12-77 to 16-2-78, the Bank had issued appointment letter which he has misplaced somewhere and is not traceable. Thus the above testimony of the workman Shri Parasmal Surana that he was appointed by Bank Manager, University Campus Branch, Indore for 76 days i.e. from 3-12-77 to 16-12-78 in subordinate cadre against permanent vacancy is uncorroborated by any independent, oral or documentary evidence cannot be placed reliance upon and is insufficient to prove his case that he was appointed as peon w.e.f. 3-12-77 to 16-12-78 for 76 days against permanent vacancy. Thus it is not proved that the workman worked w.e.f. 3-12-77 to 16-2-78—76 days in subordinate cadre against permanent vacancy in the University Campus Branch, Indore of the management.

9. The workman has averred in his statement of claim that the work of peon against the permanent vacancy was also extracted from him w.e.f. 27-2-78 to 27-3-78 and the appointment letter for the said period was also issued to him but he was not paid salary for the said period. Against it, the pleadings of the management are that the workman neither worked during the period 27-2-78 to 27-3-78 nor any letter of appointment was issued to him and therefore the question of payment of salary for the said period does not arise. In his affidavit workman Shri Paramal Surana deposed that he worked as peon w.e.f. 22-2-78 to 27-3-78 (69 days) for which a letter of appointment was also issued to him but he was not paid his salary for the said period. On being cross-examined, workman Shri Parf smal Surana deposed that actually he began working in the Bank on 27-2-78 though it is wrongly typed in his affidavit that he has been working in the Bank w.e.f. 22-2-78. Management's witness Shri Govind Sawan deposed in his affidavit that during conversation workman Shri Surana told him that he worked as peon from 27-2-78 to 27-3-78 and he was not paid salary for the said period. This evidence of the witness is nothing but is hearsay and is not admissible in evidence. Workman has filed photostat copy of the appointment letter dated 28-3-78 to indicate that he was appointed as temporary peon w.e.f. 27-2-78 to 27-3-78 in the University Campus Branch, Indore of the management. Regarding this photostat copy of appointment letter, Shri Arvind Joshi, the then Branch Manager, University Campus branch, Indore of the management deposed in his examination in chief that it was not possible to say whether the above mentioned photostat copy of appointment letter is genuine or not. He further added that for the proper verification of the original, alleged photocopy of appointment letter may be produced. On being cross-examined on this point, this witness deposed that he is unable to tell if the said photostat copy of appointment letter bears his signature because of its being only the photostat copy. He also added that if the original of the aforesaid photostat copy be shown to him, he may identify his signature. This witness further deposed that without seeing the original, he is unable to tell if the contents of the photocopy of the appointment letter are correctly written or wrongly written. The workman failed to prove the said photostat copy of the appointment letter in accordance with law of evidence as he has failed to produce its original. Therefore the aforesaid photostat copy of the appointment letter cannot be read in evidence. On re-cross examination, on the next date, the original of the said photostat copy of appointment letter was shown to this witness. After seeing the appointment letter in original, this witness admitted that it bears his signature which is in red ink. This witness specifically deposed that the original is actually not the letter of appointment which was sent to the workman by his office. He added that the original appointment letter was sent to the Regional Manager

(I), Indore. This witness further deposed that in the upper part of this original appointment letter, some changes have been made. In this respect, the witness himself explained that whenever he wrote a letter to anyone he used to write "Shri" before the name of the addressee but in this original "Shri" is not written before the name of Parasmal Surana. It is worthwhile to mention here that even the above mentioned original appointment letter has not been brought on record of this reference case by the workman. I am, therefore, of the considered opinion that it is not at all proved that the Branch Manager of the University Campus Branch, Indore of the management sent the appointment letter dated 28-3-1978 (alleged photostat copy of the letter on record) to the workman. Thus it is not proved that the workman worked w.e.f. 27-2-78 to 27-3-78 for a period of one month as temporary peon in the University Campus Branch, Indore against permanent vacancy.

10. In the statement of claim, it has been averred by the workman that the Branch Manager, Pardeshipura Branch, Indore appointed him in subordinate cadre w.e.f. 29-4-78 to 30-6-78 and on 1-7-78, his services were unauthorisely terminated. Against it , it has been pleaded by the management that he was engaged in the said branch at Indore as a peon from 29-4-78 and worked at the said branch for 63 days i.e. upto 30-6-78 and that this engagement was casual and the workman does not acquire any right of employment. In support of the above averment, workman Shri Parasmal Surana filed his affidavit. On being cross examined, he deposed that he worked in Pardeshipura Branch w.e.f. 29-4-78 to 30-6-78. He also deposed that an appointment letter was issued to him for the said period which he has misplaced somewhere and is not traceable. There is a photostat copy of certificate dated 23-2-79 purporting to be issued by the Bank Manager, Pardeshipura Branch, Indore. It has been filed by the workman to indicate that he worked in the said branch as peon/chowkidar w.e.f. 29-4-78 to 30-6-78. It is a photostat copy and it has not been proved in accordance with law of evidenee and therefore it cannot be read in evidence. Thus there remains solitary oral evidence of workman Shri Parasmal Surana to indicate that Branch Manager, Pardeshipura Branch, Indore appointed him in the subordinate cadre w.e.f. 29-4-78 to 30-6-78. It is the oral evidence of a highly interested witness in the case and therefore cannot be placed reliance upon being uncorroborated by any independent, oral or documentary evidence and is in sufficient to prove that the workman was appointed permanently in subordinate cadre w.e.f. 29-4-78 to 30-6-78 in the Pardeshipura Branch, Indore by the management. Thus the workman has failed to prove his case that he intermittently worked at two different branches of the management as peon against permanent vacancies.

11. In his evidence of cross-examination, workman Shri Parasmal Surana deposed that during 27-2-78 to 27-3-78 and during the period for which he worked in the branches of Bank of the management, his father was posted as officer in the Bank and was posted at MCC Branch of the management. He further deposed that the branches in which he worked, the officers appointed in those branches were known to his father. This witness admitted that he was employed in the Bank due to influence of his father. This witness has denied that the photostat copy of certificate of employment for 76 days w.e.f. 3-12-77 to 16-2-78 was falsely obtained by him due to influence of his father. Whatever may be the real fact, the said certificate has no value as it is a photostat copy and has not been proved in accordance with law of evidence.

12. It is concluded from the above discussed pleadings and evidence of the parties that the workman was engaged as peon w.e.f. 3-12-77 to 16-2-78 for 76 days by the University Campus Branch, Indore of the management and thereafter he was engaged in Pardeshipura Branch, Indore as a peon on 29-4-78 where he worked for 63 days continuously. But it is not proved that the workman was engaged as temporary peon against permanent vacancies in the aforesaid two branches of the management.

13. It is mentioned in the written argument filed for the workman that he worked as peon against a permanent vacancy as temporary appointment cannot exceed 3 months in terms of para 20.8 of the 1st Bipartite Settlement dated 19-10-1966. Para 20.8 of the settlement reads as under :

> "A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of three months during which the bank shall make arrangements for filling up the vacancy permanently. If such a temporary workman is eventually selected for filling up the vacancy, the period of such temporary employment will be taken into account as part of his probationary period."

There is no documentary evidence on record to prove while the workman was working in the aforesaid two branches of the management, there existed any permanent vacancy so that he might have been selected for appointment for filling any of the said vacancies. Therefore it cannot be held that the management's act in not providing employment to the workman after 30-6-78 is violative of 1st Bipartite Settlement and is not justified. According to argument of the workman, it has been established that right from 3-12-77 to 30-6-78 workman Shri Parasmal Surana has worked as peon (subordinate staff) in the State Bank of Indore with artificial intermittent breaks given to him to deny continuity benefits to him. In this respect, the reliance has been placed on "SBI versus N.Sundramoney (1976 J.I.LLJ-(478) (SC). As held above, it is proved that the workman was engaged as peon w.e.f. 3-12-77 to 16-2-78 for 76 days in the University Campus Branch, Indore of the management and thereafter he was engaged in Pardeshipura Branch, Indore as a peon w.e.f. 29-4-78 to 30-6-78 for 63 days. But it is not proved that he was engaged as temporary peon against permanent vacancies in the aforesaid two branches of the management. There is no evidence to

indicate the artificial intermittent breaks were given to him to deny continuity benefits to him. I have very carefully gone through the law cited above. I am of the considered opinion that the law cited above is not applicable to the facts and circumstances of this case. As already mentioned above, the workman workd in University Campus Branch, Indore as temporary peon w.e.f. 3-12-77 to 16-2-78 for 76 days and in Pardeshipura Branch, Indore w.e.f. 29-4-78 to 30-6-78 for 63 days, meaning thereby from 27-2-78 to 30-6-78 he worked as peon in two different branches of the management Bank with a break of about one month and thus he worked for total 139 days. Having considered all the facts and circumstances of the case, I am of the considered opinion that this case is not hit by any provision of I.D. Act 1947. It is, therefore, concluded that the workman has not acquired any legal right to remain continued in the employment of the management Bank as peon after 30-6-78 and his discontinuation from service i.e. termination is not bad in law.

14. In view of the above, the reference deserves to be answered in favour of the management and against the workman, but considering the facts and circumstances of the case, I am of the view that the parties should be directed to bear their own costs of this reference. The reference is, therefore, answered in favour of the management and against workman Shri Parasmal Surana holding that the action of management of RM-I, State Bank of Indore, Indore in not providing employment to Shri Parasmal Surana, peon after 30-6-78 and his said termination is justified. Therefore the workman is not entitled to any relief. The parties shall bear their own costs of this reference.

15. Copy of the award be sent to the Government of India, Ministry of Labour as per rules.

C.M. SINGH, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2006

का.आ 4769.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्रिटिश एअरवेज के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली-II के पंचाट (संदर्भ संख्या 165, 164, 163, 166, 167/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-11012/44; 42; 43; 45; 41/96-आई आर (सी-I)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4769.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 165, 164, 163,166, 167/1997) of the Central Government Industrial Tribunal/ Labour Court No.-II, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of British Airways and their workmen, received by the Central Government on 15-11-2006.

[No. L-11012/44; 42; 43; 45; 41/1996-IR (C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Presiding Officer : R. N. RAI. I.D. Nos. 167, 166, 165, 164 & 163/1997

In the Matter of :—

Shri Sunil Dutt & 4 Others,
S/o. Shri Suresh Chand Sharma,
R/o. RZ-4, Data Ram Park,
Near Radhaswamy Satsang,
Vill : Deendayalpur,
Najafgarh, Delhi,

Versus

1. The Station Manager,
   The British Airways,
   I.G.I. Airport,
   Terminal-II,
   New Delhi.
2. The Area Manager,
   British Airways,
   DLF Centre, 3rd Floor,
   Sansad Marg,
   New Delhi-110001.

AWARD

The Ministry of Labour by its letter Nos. L-11012/44/96-IR (C-I) Central Govrnment Dt. 14-10-1997, L-11012/42/96-IR (Coal-I) dated 14th October, 1997, L-11012/43/96-IR (Coal-I) dated 14th October, 1997 & L-11012/45/96-IR (Coal-I) dated 14th October, 1997 & L-11012/41/96-IR (Coal-I) dated 14th October, 1997 has referred the following points for adjudication.

The points run as hereunder :—

1. "Whether the action of the management of British Airways by terminating the services of Shri Sunil Dutt, Casual Loader w.e.f. 11-09-1994 is just, fair and legal? If not, What relief is the concerned workman entitled."

2. "Whether the action of the management of British Airways by terminating the services of Shri Harinder Singh, Casual Loader w.e.f. November, 1994 is just, fair and legal? If not, what relief is the concerned workman entitled."

3. "Whether the action of the management of British Airways by terminating the services of Shri Vijay Kumar, Casual Loader w.e.f. March, 1995 is just, fair and legal? If not, what relief is the concerned workman entitled."

4. "Whether the action of the management of British Airways by terminating the services of Shri Rajesh Kumar, Casual Loader w.e.f. December, 1993 is just, fair and legal? If not, what relief is the concerned workman entitled."

5. "Whether the action of the management of British Airways by terminating the services of Shri Ram Niwas, Casual Loader w.e.f. 13-02-1995 is just, fair and legal? If not, what relief is the concerned workman entitled."

The workmen/applicants have filed claim statements. In their claim statements it has been stated that the workman Shri Sunil Dutt was engaged in January, 1993 and he was retrenched on 11-09-1994. Shri Harinder Singh was engaged in January, 1993 and he was retrenched in November, 1994. Shri Vijay Kumar joined in February, 1992 and he was retrenched in March, 1995. Shri Rajesh Kumar joined on 15-06-1986 and was retrenched in December, 1993 & Shri Ram Niwas was engaged in 1988 and was retrenched w.e.f. 13-02-1995.

All the workmen worked continuously during the period of their employment. ID Case Nos. 167, 164, 165, 166 & 163/1997 contains the same subject matter and all these cases can be adjudicated upon by common evidence and findings. All the cases are being taken up together.

The workmen applicants have filed claim statement. In the claim statements it has been stated that the workmen joined the services of the management in January, 1993 as a Casual Loader and have been working as such continuously since then.

That the work and conduct of the workmen were thoroughly satisfactory as is evident from the fact that no remark whatsoever was either made against or received by the workmen.

That while things were so going on smoothly, all of a sudden and without any provocation, the services of the workmen were terminated without assigning any reason whatsoever. When the workmen approached the management, they were informed that they would be engaged by M/s. Cambata Aviation (P) Limited, who are their official Ground Handling Agents, officially allowed by International Airport Authority of India to take contracts with International Airlines. Although the workman approached M/s. Cambata Airways (P) Limited as well as the management herein *viz.* British Airways, they were not taken back.

That the management had handed over and entrusted all the ground work including the work done by the workmen and others like them to M/s. Cambata (P) Limited on contract from August 1995 thereby changing the service conditions of the Loaders and the workmen in question wrongfully and illegally and in violation of Section 9 A of the ID Act, 1947 read with Schedule IV thereto.

That the workmen raised an industrial dispute with the Central Industrial Machinery and despite the best efforts of the ALC(C) no settlement could be brought about in the dispute owing to the unhelpful, unreasonable and rigid stand of the management. The dispute has therefore, been referred to this Hon'ble Tribunal for adjudication by the appropriate government as mentioned earlier.

That the workmen were not the junior most. The following workmen who were juniors to the workmen have been retained in violation of the principles of "first in—last out".

Shri Balak Singh appointed as Casual Loader in July, 1993. Shri Ganesh Matta appointed as Casual Loader in November, 1994. Shri Kishan appointed as Casual Loader on 12-05-05-1985.

That the termination of the workmen is a retrenchment in terms of the Judgment of Hon'ble Mr. Justice Krishna Iyer and Hon'ble Mr. Justice A.C. Gupta of the Hon'ble Supreme Court reported in pages 478 to 484 of the LLJ I 1976.

That compliance with the provisions of Section 25 F is a prerequisite and pre-condition to retrenchment and non-compliance with the provisions of the said section renders the workmen as continuing in service till compliance. In as much as the workmen in this instant dispute have not been paid the notice pay and the service compensation besides not following other provisions of the said Section 25 F before his retrenchment, he continues in service.

The respondent/management has filed written statement. In the written statement it has been stated that Mr. Sunil Dutt & 4 others (hereinafter referred to as the claimants) had worked with the management as a Loader purely on casual basis and they have no right to the post. The appointment was on day to day basis and the claimants in para 3 of the statement of claim admits that they had worked as a casual loader. The order of reference regarding termination of services of the claimants are incompetent and bad in law and cannot give rise to an industrial dispute.

That the government while referring the dispute for adjudication to this Hon 'ble Court has wrongly placed the burden of proof on the management to justify the alleged termination of the services of the claimants. The order of reference as made is, therefore, incompetent and bad in law on this ground also.

That the order of reference has not been made by the appropriate Government as per Section 2(i) of the ID Act, 1947. The order of reference is incompetent and bad in law on this ground as well.

That the order of reference has been made mechanically and without application of mind. Without prejudice to the a foregoing preliminary objections, which are without prejudice to each other, reply on behalf of the management to the statement of claim on merits is given hereunder :—

That in reply to para 3 of the statement of claim it is not disputed that the claimants have worked as a casual

loaders. It is, however, misconceived and wrong and contend that the claimants have joined the services of the management in January, 1993 and had been working continuously as a casual loader since then. The correct facts, *inter alia,* are that :—

1. That the management is an Airlines Corporation and is engaged in business of carrying passengers and the cargo. It operates 13 weekly flights from the Indira Gandhi International Airport, New Delhi. On two of these flights there are no joining passengers at all from New Delhi. Four flights going to Dhaka Cater to approximately 50 passengers only. The number of passengers vary on the weekly flights for London depending on the tourist season etc.

2. The management has employed sufficient number of permanent loaders for driving the vehicle, monitoring safety of passengers luggage in the loading/unloading area, counting the number of bags loaded in various baggage containers with their tag numbers, ensure baggage security, guiding passengers to X-ray machines and customs and immigration counters and transfer of confidential and private mail between the Airport and the City Office. These permanent loaders are rostered for continuous and regular 8 hours shift duties.

3. Depending on the requirement and the work load from flight to flight and season to season the management had utilized services of some persons on purely temporary and casual basis to assist the permanent loaders wherever and whenever necessary. These casual loaders assisted the passengers with their luggage at the check in counters. Most passengers normally handle their luggage themselves. Sometimes elderly or handicapped passengers are also traveling and on such occasions the casual loaders provide the necessary assistance in handling their luggage, pushing the wheel chairs whenever necessary. Sometimes the baggage is mishandled also the casual loaders assist the staff in depositing the mishandled baggage in the Customs Warehouse. The number of casual loaders keeps on varying.

4. The claimants were one such casual loaders working purely on temporary and casual basis from time to time in the exigencies of work on flight to flight basis. Like other casual loaders they were paid a fixed amount per flight. The management was under no obligation to provide work to the claimants on each flight and similarly it was not obligatory on the part of the claimants to be available for duty on each flight.

The contents of para 5 of the claim statement are misconceived, wrong and therefore, denied. It is misconceived and wrong to contend that the services of the claimants were terminated without any reason whatsoever. The claimants have admitted that the management had entrusted all the Ground Handling Operations to M/s. Cambata Aviation (P) Limited on contract from August, 1995. The claimants have also admitted that M/s. Cambata Aviation (P) Limited are the official Ground Handling Agents officially allowed by International Airport Authority of India to take contracts with International Airlines. The claimants have contended that their services were terminated on 11th September, 1994. It is submitted that , the services of the claimants were never terminated by the management neither on 11th September, 1994 or on any other date as alleged or at all. The fact of the matter is that the claimants were engaged as a casual loader on day to day and flight to flight basis and in fact the claimants themselves did not approach the management for duties after 11th September, 1994. The engagement of the claimant as a casual loader and entrusting the entire Ground Handling Operations to *M/s.* Cambata Aviation Pvt. Limited in August, 1995 has no nexus as according to the claimants themselves they ceased to be in the employment after 11th September, 1994. The contention of the claimants that by entrusting the Ground Handling work to *M/s.* Cambata Aviation Pvt. Limited from August, 1995 brought about change in the service conditions of the claimant is obviously misconceived, misplaced and incorrect as admittedly the claimants were not in the employment of the management after 11th September, 1994. The claimants were never informed that he would be offered employment by *M/s.* Cambata Aviation (P) Limited. All other contentions raised in the para under reply are wrong and, therefore, denied.

That in reply to para 6 of the claim it is not disputed that the claimants raised disputes in conciliation. The disputes raised by the claimants were totally false, frivolous and baseless and did not constitute an industrial dispute. The order of reference made by the Government to this Hon 'ble Court regarding the termination of the services of the claimants by the management in incompetent and bad in law.

That the contents of para 7 of the claim are misconceived, wrong and, therefore, denied. It is misconceived and wrong to content that *M/s.* Balak Singh, Ganesh Matta and Kishan were junior to the claimant or that they are working as casual loaders with the management. All these casual loaders had settled their claims in full and final by entering into a settlement with the management. The principle of "last come first go" has no applicability in the facts and circumstances of the instant case.

That the contents of para 8 and 9 of the claim are misconceived, wrong and, therefore denied. The claimants were not retrenched from service. The engagement of the claimants were on casual and on day to day basis and his services automatically came to an end. The claimants have no right to continue in employment indefinitely. The services of the claimants were never terminated by the management. Reliance placed by the claimants on the

provisions regarding retrenchment are totally misconceived and misplaced. The claimants were even otherwise not in continuous service for one year and had not worked for 240 days in any year. The judgment relied upon by the claimants is not applicable in the facts and circumstances of the instant case. Reliance placed on Section 25 F of the ID Act, 1947 is misconceived and misplaced. The claimants were not entitled to any notice pay or service compensation as alleged or at all. The claimants have alleged that their services were terminated in November, 1994 but the claimants raised disputes in conciliation in April, 1996 i.e. after more than one and a half year. This also clearly shows that the disputes raised by the claimants were not bona fide and is by way of an afterthought with some ulterior motives. The claimants are gainfully occupied.

In view of the above submissions and having regard to all the facts and circumstances of the instant case, the claimants are not entitled to any relief much less the relief of reinstatement with full back wages and continuity of service or otherwise. Without prejudice to the above it is submitted that the relief of reinstatement cannot even otherwise be granted on the basis of the submissions made herein-above.

It is, therefore, most respectfully prayed that this Hon'ble Court may most graciously be pleased to pass an Award accordingly.

From perusal of the pleading of the parties and the argument raised the following points arise for decision :-

1. Whether the workmen were discharging duties of regular and continuous nature?
2. Whether the workmen have performed 240 days duties in between 1989 and 1995?
3. Whether the workmen are entitled to reinstatement?
4. Amount of back wages to be paid to the workmen or not?

Point No.1: It was submitted from the side of the workmen that they were discharging continuous nature of work as Loaders. They were engaged on flights everyday.

It was submitted from the side of the management that the workmen were Loaders purely on temporary and casual basis and they have no right to the post. They worked on day-to-day basis.

It was further submitted that out of 8 Casual Loaders 5 settled their claims, dues and disputes with the management by entering into a memorandum of settlement in accordance with the provision of the I.D. Act, 1947 and Rules framed thereunder. The disputes raised by the workmen are absolutely false. It is bad in law and misconceived.

It was further submitted that the management is an Airlines Corporation and is engaged in business of carrying Passengers and Cargo. It operates various flights. The management has employed sufficient number of permanent Loaders in driving vehicles, monitoring safety of passengers etc. The Casual Loaders assist these Permanent Loaders. The claimant is one of such Casual Loaders.

It was submitted that all the International Airlines of over the World take the assistance of Local Ground Handling Agents to carry out several functions of Airlines operations including those being handled by permanent Loaders.

It was further submitted that M/s. Cambata Aviation (P) Limited are the official Ground Handling Agent officially allowed by International Airport Authority of India to take contract with International Airlines. The Ground Handling Agents provides necessary treatment and manpower to assist the Airlines in the areas where the requirement is not permanent in nature and is intermittent and is sporadic in nature depending on the frequency of the flight. The management took the services of M/s. Cambata Aviation (P) Limited for Ground Handling Services.

It was submitted from the side of the workman that MW 1 has admitted that 7 workmen entered into compromise and retrenchment compensation was paid to them and all the 7 employees were engaged by M/s. Cambata Aviation (P) Limited. The management has admitted that 7 Casual Loaders were taken on rolls of M/s. Cambata Aviation (P) Limited. It proves the fact that the work is of continuous and regular nature. M/s. Cambata Aviation (P) Limited is still Incharge of Ground Handling. This proves that the work is of continuous and regular nature. After retrenching these workmen and 7 other workmen the management entered into agreement with Cambata Aviation (P) Limited for discharge of the duties of Casual Loaders.

It is settled law that Contracting Agency cannot be employed in case where work is of perennial and regular in nature and is of sufficient duration. The workmen of M/s. Cambata Aviation (P) Limited are still discharging the duties of the Casual Loaders. M/s. Cambata Aviation (P) Limited absorbed at least 7 workmen out of the Casual Loaders and gave them regular appointment. M/s. Cambata Aviation (P) Limited is a Contracting Agency. It can supply equipments and other things on contract basis but as per the law prevalent in this Country human labour cannot be supplied by any Contracting Agency. Contract is held sham not genuine and camouflage for discharging duties perennial and continuous in nature. It is provided in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 that :—

Section 10 : Prohibition of Employment of Contract Labour: (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board, or as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2). Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that

establishment and other relevant factors, such as,—

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

It becomes quite obvious that contract employees cannot be taken in case process operation and other work is incidental to or necessary for the Industry or if the work if of perennial nature or of sufficient duration and where it is done ordinarily through regular workman in that establishment.

It is admitted case of the management that casual loaders were employed but M/s. Cambata Aviation (P) Limited as official Ground Handling Agents so the respondents took their services and they supplied manpower. Since the work of loading, unloading is of perennial nature and of sufficient duration and permanent loaders have been engaged by the management, they cannot get such work done by any contracting agency. The work performed by this casual loader is of continuous and regular nature. This point is decided accordingly.

Point No. 2. Sunil Dutt's Case: It was submitted from the side of the workman that he was engaged in January, 1993 and he was retrenched on 11-09-1994 without payment of retrenchment compensation. It was further submitted that this workman has completed 240 days work during his period of employment. It was further submitted that the management had admitted in letter to ALC(C) Paper No.B-II that this workman was casual loader working purely on temporary basis from time to time in the exigencies of work. It has also been stated in this letter that the workman has filed this claim after a lapse of more than one year and three months. There is no case of the management that the workman left his work himself and it is not the case of the management that he was paid retrenchment compensation. The only pleading taken before the ALC is regarding raising of dispute after a lapse of more than one year and three months. Limitation Act is not applicable in I.D. Act, 1947. Reference has been sent within reasonable time. Judgments cited 1959 II LLJ page 26 (SC) and 1961 II LLJ 89 SC are not applicable in the facts and circumstances of the present case.

The workman has filed B-17, Daily Permit (Gate Pass). It indicates that he has been issued permit by the BCAS. The workman has filed B-19 photocopy of payment made to him in January, 1993. He has filed Paper No.219, payment of January, 1993, 220, August, 1994, 221, February, 1993, March, 1993, April, 1993, June, 1993, January, 1994, February, 1994, March, 1994, April, 1994, May, 1994, June, 1994, July, 1994 and August, 1994. It was submitted from the side of the management that these photo copies are false and fabricated. These photo copies were not filed before the ALC(C).

It was submitted from the side of the workman that there is slight difference between these photo copies. Some photo copies were taken while all the columns were not filled up and payment was not made so there is no stamp and signature. I have perused the papers filed in this Court and before ALC. There is variance regarding stamp and filling of one column. The rest of the handwriting are the same.

It was submitted from the side of the workman that the loose original sheets are in possession of the management. The workman has procured only photo copy. It was the duty of the management to place the original records to falsify the photocopy.

Harinder Singh's Case: It was submitted that this workman was engaged in January, 1993 and he was retrenched in November, 1994. He has performed duties continuously for more than 240 days in every year of his employment. He has filed Daily Permit of 1994 of BCAS. Employment of this workman is not disputed by the management. It has been only alleged that he was engaged on purely temporary basis. This workman has filed photocopy of payment sheet of January, 1993 and November, 1994, October, 1994, September, 1994, August, 1994, July, 1994, February, 1993, August, 1993. It was the duty of the management to maintain muster roll register for entering of these casual loaders but no register has been maintained.

Vijav Kumar's Case: Shri Vijay Kumar joined the management in February, 1992 and was retrenched in March, 1995. This workman has filed Daily Permit of November, 1994 and photocopy of loose sheets B-19 and B-20, February, 1992, March, 1993, January, 1994, February, 1994, March, 1994, April, 1994, November, 1994, December, 1994, January, 1995, February, 1995, March, 1995.

It was submitted from the side of the workman that it was the duty of the management to maintain muster roll register. The workman has filed the photocopies of payment sheet which he can procured.

Rajesh Kumar's Case: Shri Rajesh Kumar joined the management on 15-06-1986 and was retrenched in December, 1993. This workman has filed loose sheets of January, 1987, February, 1987, March, 1987, April, 1987, January, 1992, February, 1992, March, 1992, April, 1992, May, 1992, June, 1992, July, 1992, August, 1992, February, 1993.

It was submitted that admittedly the management has made payment on loose sheets. The management did not maintain muster roll register in contravention of the

provision of ID Act, 1947, section 25 D mandates that the muster rolls register is maintained.

Ram Niwas's Case: Shri Ram Niwas was engaged in the year 1988 and was retrenched w.e.f. 13.02.1995. The workman has filed loose photocopy payment sheets of January, 1992, February, 1992. It was submitted from the side of the workman that in February, 1992 payment on 31st February has been shown. The entry is only 28. There is overlapping of column so the last entry has come against the date 31. Really 28 payments have been made for 28 days. There is no merit in this contention. He has further filed loose papers photocopy sheets from B-95 to B-109. Payment made in January, 1995. These loose payment sheets go a long way to prove that this workman has also worked for more than 240 days in the years of his employment.

It has been held in AIR 1980 SC 1219 that the purpose of paying retrenchment compensation is to mitigate the distress of a workman who has put in more than 240 days of continuous service who is suddenly thrown out of employment and give enough sustenance power until he seeks alternative employment

It has been held in 1994 - II LLJ - 378 as under :

"The Industrial Disputes Act stands on a different footing than the common law. The Act is mainly meant to resolve the disputes arising between the employer and the employee, in the manner provided under the Act and to protect the just interest of the labour; while deciding cases when question of legality of retrenchment arises.

The management should have paid one month's pay in lieu of notice and retrenchment compensation at the time of retrenchment. In case it is not paid simultaneously with retrenchment order, the retrenchment does not become valid and operative. The workman shall be deemed to be in service in the eye of law.

Offering of retrenchment compensation at a later stage during the conciliation proceedings or at any later stage will not make a void retrenchment valid. The retrenchment compensation is to be paid along with the order of retrenchment and not at any later stage. The management has not effected proper retrenchment.

The management is run under the authority of the Central Government. It is controlled industry. The management has to act under the provision of the ID Act, 1947.

It was submitted from the side of the management that the workmen have filed photocopies of loose sheets. So they are not admissible in evidence. It is admitted case of the management that no muster roll register was maintained for entering the names of casual labours. There is neither any attendance register nor any payment register. Section 25 D of the ID Act, 1947 mandates that the management will maintain muster roll register.

It is settled law that in case the name of a workman is stricken off from the muster roll register, he should be given notice regarding his absence and in case he fails to turn up despite service of notice, the name of the casual worker may be stricken off from the muster roll register. In the instant case the management has categorically admitted that there was no muster roll register of the casual loaders. The management has acted in breach of section 25 D of the ID Act, 1947. This section is mandatory. It was imperative for the management to maintain muster roll register of the casual loaders and it was also necessary to issue them notice in case they fail to turn up.

It was submitted from the side of the management that the workmen stopped coming themselves. The management has filed copy of the objections filed before the ALC. It has nowhere been stated that the workmen stopped coming themselves and their services were not terminated. The management has not taken the plea of the workmen absenting themselves from duty in reply to the claim filed before the ALC. So in case the plea of the workmen voluntary leaving job cannot be taken later on. It shall be deemed after thought.

One of the workman has admitted that he stopped coming himself and he worked only up to November, 1994. The workmen are illiterate persons. They may not understand the meaning of every question so one workman has admitted leaving job himself out of disgust and desperation as so many questions have been put up during cross examination.

It is the case of the workmen that they were retrenched. The management has filed letter of compromise. It appears from perusal of that compromise that the name of three workmen have been mentioned in the compromise. MW/1, paper B-64. These names are of Balak Singh, Ganesh Matta and Shri Kishan. The workman Shri Ganesh Matta was engaged in November, 1994, Shri Kishan on 12-05-1995 and Shri Balak Singh in July, 1993. These workmen have been paid retrenchment compensation. It becomes quite obvious that after terminating the services of the workmen these workmen were inducted in their places.

The management has not sent any notice while these workmen absented and no retrenchment compensation has been paid. In case a workman absented himself in that case also it is imperative on the management to pay him retrenchment compensation. No retrenchment compensation has been paid to these workmen.

It is not sufficient that the management takes plea in any subsequent proceedings that the workmen themselves stopped coming, The management has to prove it. It was the duty of the management to issue notice to these workmen when they stopped coming. No notice has been issued. So this fact that the workmen themselves stopped coming cannot be proved by mere statement and affidavit of the management. The case of the workman is that they were retrenched by the management and they were not permitted to resume their duties. In the absence of any notice the case of the management appears to be true.

All the workmen have performed 240 days work at least in two years. One of the workman has worked almost

for a period of 5 years. No workman has been paid any retrenchment compensation. All of the workmen have worked for 240 days in their period of employment referred to above. The workmen are lay persons. They may not be knowing that they are entitled to retrenchment compensation and one month's pay in lieu of notice. They have raised the dispute after one year and three months i.e within the period of Limitation as Limitation Act is not applicable in ID Cases. There is no unreasonable delay. This point is decided accordingly.

Point No.3 : It was submitted from the side of the workmen that they have worked for 240 days so in view of Section 25 F, it postulates that in case as the work is of continuous and regular nature and the workmen have worked continuously for 240 days they cannot be retrenched without payment of one month's pay in lieu of notice and retrenchment compensation. The workmen have not been paid retrenchment compensation and one month's pay in lieu of notice.

My attention was drawn by the Ld. Counsel of the workman to 2000 LLR 523 State of UP and Rajender Singh. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1313. The Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25 F are not complied. In the instant case no compensation has been paid to the workman who has continuously worked for 6 years.

It has been held in AIR 1980 SC 1219 that the purpose of paying retrenchment compensation is to mitigate the distress of a workman who has put in more than 240 days of continuous service who is suddenly thrown out of employment and give enough sustenance power until he seeks alternative employment

It has been held in 1994 - II LLJ - 378 as under:

"The Industrial Disputes Act stands on a different footing than the common law. The Act is mainly meant to resolve the disputes arising between the employer and the employee, in the manner provided under the Act and to protect the just interest of the labour; while deciding cases when question of legality of retrenchment arises.

The management should have paid one month's pay in lieu of notice and retrenchment compensation at the time of retrenchment. In case it is not paid simultaneously with retrenchment order, the retrenchment does not become valid and operative. The workman shall be deemed to be in service in the eye of law.

Offering of retrenchment compensation at a later stage during the conciliation proceedings or at any later stage will not make a void retrenchment valid. The retrenchment compensation is to be paid along with the order of retrenchment and not at any later stage. The management has not effected proper retrenchment.

The management is run under the authority of Central Government. It is controlled industry. The management has to act under the provision of the ID Act, 1947.

It was submitted that the management has committed unfair labour practice by engaging casual and temporaries again and again. It is a penal provision.

It was further submitted that Section 25 T provides that the management should not indulge in unfair labour practice. Section 25 U provides that a person who commits any unfair labour practice will be punishable with imprisonment for a term which may extend to six months or with fine, which may extend to Rs. 1000 or with both. The intention of the legislature in enacting 25 T & 25 U is obvious. The legislature wanted that in case Casual and Badlis are engaged for a long period, it amounts to unfair labour practice. There is punitive clause for committing unfair labour practice.

It was submitted from the side of the workman that Vth Schedule of the ID Act specifies some practices as unfair labour practice. The Vth Schedule clause 10 provides the criteria for ascertaining unfair labour practice. It is extracted as hereunder:

"To employ workman as Badlis, Casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of a permanent workman."

Clause 10 of the Vth Schedule stipulates that in case the workmen are, employed as Casuals, Badlis or Temporary and they are continued as such for years, it will amount to unfair labour practice. In the instant case the workman has been continued as casual and temporary for 8 years. It establishes to the hilt that the respondent management has committed unfair labour practice. The workman has been engaged for 8 years as casual and temporary and thereafter he has been removed. He has not been paid retrenchment compensation.

In case retrenchment compensation is not paid Section 25 F of the ID Act is attracted. There is no cessation of services. A workman is deemed continued in service in the eye of law. In case there is breach of Section 25 F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed unnecessarily so Section 25 F, U, T and Clause 10 of Vth Schedule have been enacted.

The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workman should not be engaged for years and then he should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision the labour court has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The workmen have proved that they have worked for 240 days so they are entitled to one month's pay in lieu of notice and retrenchment compensation. Retrenchment compensation has not been paid to them while terminating their services. Retrenchment is not effected validly in case pay in lieu of one month's notice and retrenchment compensation has not been paid to the workman at the time of retrenchment. These workmen have not received any retrenchment compensation so they are entitled to reinstatement. This point is decided accordingly.

Point No. 4: It was submitted that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages. In the instant case the matter involved was a case of theft of large quantity of Aluminium Wire. Departmental inquiry was not conducted in accordance with the principles of natural justice so dismissal was found bad. In such circumstance the Hon'ble Apex Court held that the order for payment of full back wages was not justified if termination is set aside. In PGI Vs. Raj Kumar (2001) 2 SCC 54 the Hon'hle Apex Court upheld the 60% award of back wages of the Tribunal.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workman in falsing the dispute.

In 1978 Lab IC 1968—Three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer.

In AIR 2002 SC 1313 the Hon'ble Apex Court reduced the back wages to 25%.

In 2005 IV AD SC 39 - Three Judges Bench of the Hon 'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

A Three Judges Bench of the Hon'ble Apex Court has held in 1993 II - LLJ that termination of services affects the livelihood of not only of the employee but also of the dependents. So in case of illegal termination of service the workman should be reinstated.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal dis-engagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

In such cases the workman is reinstated with back wages and the respondents have every right, after payment of back wages and resinstatement, to retrench him validly following the principles of first come last go so that Section 25, G & H of the ID Act are not violated.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11 A of the ID Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

It is of course true that full wages do not follow reinstatement as automatically and mechanically no precise formula can be laid down as to when full back wages can be allowed. It depends on facts and circumstances of each case. Full back wages should not be allowed mechanically or automatically or as natural consequence.

It was submitted from the side of the management that the workmen have not pointed out that they are not gainfully employed. The workmen have admitted that they did some work off and on. The workmen are not gainfully

employed in any establishment. They are manual workers. They must be doing some sort of work intermittently for their subsistence. The plea of employment has been taken subsequently. It might have been overlooked while filing claim statement.

It was further submitted that the workmen have contributed little or nothing at all after their retrenchment. It was the management who prevented the workmen from working. In the facts and circumstances of the case it is held that 25% back wages will meet the ends of justice.

The reference is replied thus:

The action of the management of British Airways in terminating the services of S/Shri Sunil Dutt, Casual Loader w.e.f. 11-09-1994, Harinder Singh, Casual Loader w.e.f. November, 1994, Vijay Kumar, Casual Loader w.e.f. March, 1995, Rajesh Kumar, Casual Loader w.e.f. December, 1993 & Shri Ram Niwas, Casual Loader w.e.f. 13-02-1995 is neither just nor fair nor legal. The workmen are entitled to be reinstated along with 25% back wages. The management is directed to reinstate all the above named workmen and pay them 25% back wages within two months from publication of the award.

Award is given accordingly.

Dated: 09-11-2006 R.N. RAI, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2006

का.आ. 4770.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एअरलाइंस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई-II के पंचाट (संदर्भ संख्या 115/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-11012/135/2000-आई आर (सी-I)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4770.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 115/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai-II as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Air lines and their workman, which was received by the Central Government on 15-11-2006.

[No. L-11012/135/2000-IR (C-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO 2, AT MUMBAI

PRESENT:

A.A. LAD, Presiding Officer:

Reference No. CGIT-2/115 of 2000

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIAN AIRLINES

The Regional Director

Indian Airlines

Western Region,

New Engineering Complex, Sahar Mumbai-400 099

AND

Their Workmen

The Chairman
Air Corporation Employees Union
C/o. Indian Airlines Ltd.,
New Engineering Complex, Sahar
Vile Parle (E) Mumbai-400 099.

APPEARANCE:

For the Employer : Ms. P.C. Janvekar, i/b Bhasin & Co.

For the Workmen : Mr. A.T. Raj, Representative

Date of passing of Award : 22nd September, 2006

AWARD

1. The Government of India, Ministry of Labour by its Order No. L-11012/135/2000/IR(C-I), dated 29-11-2000 in exercise of the powers conferred by clause (d) of sub-section(1) and sub-section2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

> "Whether the action of M/s. Indian Airlines Ltd., in terminating Shri S.D. Unawane from the services of the Indian Airlines is justified and proper? If not, to what relief is the workman entitled?"

2. In support of the said subject matter second party has filed Statement of Claim at Ex-4. It was replied by first party by filing written statement at Exhibit-13. My Ld. Predecessor framed issues at Exhibit-15 on the basis of the pleadings. The reference was posted for recording of evidence on the issues.

3. Reference was taken in Lok Adalat held on 22-9-2006. Both parties arrived to settlement as per Exhibit-37. Accordingly, reference is disposed of by passing following order:

ORDER

In view of purshis Ex-37 reference is disposed of.

Mumbai, dated 22-09-2006

A.A. LAD, Presiding Officer

Reference CGIT-2/115 of 2000

Indian Airlines Ltd.

V/s.

Air Corporation Employees Union

PRESENT:

Miss Prerana Janvekar Adv. For Management

A.T. Raj, Secretary of Union alongwith the workman P.D.Unavane

The matter is settled by way of reinstatement of the workman without backwages and the parties have filed letter of consent dated 18-9-2006 to this effect. The workman has also filed necessary authority letter dated 6-9-2006 authorising the Union to settle his matter on his behalf.

Sd/	Sd/
(Prerana C. Janvekar) For Management	(For workman)
Sd/	Sd/
(Dy. Manager [P]) For Management	(Workman)
Sd/	Sd/
(Jaiprakash Sawant) Advocate-Panel Member	(A.M.Koyande) Advocate-Panel Member
Sd/	Sd/
(B.J.Sawant) Advocate -Panel Member	(V.Narayanan) Advocate-Panel Member

नई दिल्ली, 16 नवम्बर, 2006

का.आ 4771.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्रिटिश एअरवेज के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली-II के पंचाट (संदर्भ संख्या 63/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2006 को प्राप्त हुआ था।

[सं. एल-11012/40/96-आई आर(सी-1)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 16th November, 2006

S.O. 4771.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/1997) of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi-II now as shown in the Annexure in the industrial dispute between the employers in relation to the management of British Airways and their workman, which was received by the Central Government on 15-11-2006.

[No. L-11012/40/96-IR (C-1)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT - II, NEW DELHI

PRESIDING OFFICER : R. N. RAI.

I.D. No. 63/1997

IN THE MATTER OF:

Shri Salim Khan,
S/o. Shri Basheer Khan,
E-6/68 Sultanpuri, Delhi - 110 041.

VERSUS

The British Airways,
I.G.I. Airport,
Terminal - II,
New Delhi.

AWARD

The Ministry of Labour by its letter No. L-11012/40/96-IR (Coal-I) Central Government Dt. 28-10-1997 has referred the following point for adjudication.

The point runs as hereunder :—

"Whether the action of the management of British Airways in terminating the services of Shri Salim Khan, Casual Loader w.e.f. 14-8-1995 is just, fair and legal ? If not, to what relief is the concerned workman entitled."

The workman applicant has filed claim statement. In the claim statement it has been stated that the background, circumstances and facts leading to the above reference to this Hon'ble Tribunal by the appropriate Government are in brief as follows:

That the workman joined the services of the management in December, 1989 as a Casual Loader and has been working as such continuously since then. That the workman also worked as C.I.Q. (Customs Investigation Question Clerk) for about a year during 1994-95. His services were thoroughly satisfactory as is evident from the absence of any remark complaint or warning etc. from the management during these years, that is from 1989.

That, however, the workman came to understand that the management is contemplating to terminate the services of the casual loaders including himself from 14-8-1995. The workman was completely surprised as there was nothing wrong with the working of the loaders and there was no reasons as to why their services are proposed to be terminated so abruptly and so suddenly without any notice or any prior intimation.

That the workman not knowing what to do, they being illiterates, approached the Assistant Labour Commissioner, Welfare Centre, Karampura of the Government of Delhi Administration on the same day *viz.* 14th August, 1995. That the ALC promptly issued notice and directed it to be served on the management. That the workman served the notice on the management at about 6 P.M. accompanied by their counsel.

That the workman performed their morning shift from 9 AM to 14 hrs. (2 P.M.) and again reported for the second shift at 7 PM and even marked the attendance *for* the evening shift on 14.08.1995.

That at about 8 P.M. despite the notice of the ALC earlier at 6 P.M. one Mr. Mehta of the British Airways forcibly took away the duty cards of the workmen and asked them, including the workman in this dispute, to leave the premises. He further threatened that if they failed to do so he would be handed over to the Police obviously on false charges. The workman thus forcibly sent out of job without notice and without any cause for provocation, left

the premises as he could do nothing else there at that time under those circumstances.

That the workman again approached the State Assistant Labour Commissioner making application after application as the workman as well as the counsel were not aware of the procedure to conduct such disputes. The management had also appeared and putforth some suggestions which were not wholly acceptable to the workman.

That on 6-2-1996 the State Labour Commissioner closed the file realizing that he has no jurisdiction to deal with this dispute as it related to the centre and it is the Central Industrial Machinery that is competent and has jurisdiction to deal with the matter because it is central subject.

That thereafter the workman approached the ALC (C) who is the right authority to deal with the dispute. That the ALC (C) tried his best to mediate the parties to the dispute under the ID Act, 1947 and to bring about an amicable settlement of the dispute but he could not do so, owing to the respective stand of the disputants and as there was no meeting ground he reported failure of conciliation and thus the dispute has been ultimately referred to this Hon'ble Tribunal for adjudication as stated in the beginning.

That admittedly the workman is a workman within the definition of section 2 (s) of the ID Act, 1947 as also the management is an Industry under section 2(J) of the same Act. That the termination of the workman is a retrenchment as held by the Hon'ble Mr. Justice Krishna Iyer and Mr. Justice A.C. Gupta of the Hon'ble Supreme Court in the famous case of the State Bank of India *Vs.* N. Sundramoney reported in page 478 to 484 of the LLJ I 1976.

That compliance with the provisions of Section 25 F is a precondition to retrenchment and non-compliance with the provisions of the said section renders the workman as continuing in service till compliance. That in as much as the workman in this dispute had not been paid the notice pay and the service compensation besides not complying with the other provisions of section 25 F before his retrenchment he continues in service of the British Airways.

The management has filed Written Statement. In the Written Statement it has been stated that Mr. Salim Khan (hereinafter referred to as the claimant) who had been working with the management as a loader purely on temporary and casual basis has no right to the post. The appointment was on day to day basis. The order of reference regarding termination of services of a casual loader is, therefore, bad in law and is liable to be rejected on this short ground.

That the appropriate Government while referring the dispute for adjudication to this Hon'ble Court has wrongly placed the burden of proof on the management to justify the alleged termination of the services of the claimant. The order of reference as made is, therefore, incompetent and bad in law on this ground also.

That the claimant along with 7 other casual loaders had raised an industrial dispute before the ALC, NCT of Delhi. Out of 8 casual loaders 5 settled their claims, dues and disputes with the management by entering into a memorandum of settlement in accordance with the provisions of the ID Act, 1947 and rules framed there under. The claimant also agreed for an amicable settlement. He, however, after signing the settlement raised the present dispute which is totally false and frivolous and does not constitute an industrial dispute. The order referring the alleged dispute is bad in law for this ground as well. In any event after having entering into a settlement, the claimant is estopped/debarred from raising any dispute against the management.

That it is misconceived and wrong to contend that the claimant had joined the services of the management in December, 1989 and had been working continuously as a casual loader as alleged. The correct facts are that :—

1. That the management is an Airlines Corporation and is engaged in business of carrying passengers and the cargo. It operates 13 weekly flights from the Indira Gandhi International Airport, New Delhi. On two of these flights there are no joining passengers at all from New Delhi. Four flights going to Dhaka Cater to approximately 50 passengers only. The number of passengers vary on the weekly flights for London depending on the tourist season etc.

2. The management has employed sufficient number of permanent loaders for driving the vehicle, monitoring safety of passengers luggage in the loading/unloading area, counting the number of bags loaded in various baggage containers with their tag numbers, ensure baggage security, guiding passengers to X-ray machines and customs and immigration counters and transfer of confidential and private mail between the Airport and the City Office. These permanent loaders are rostered for continuous and regular 8 hours shift duties.

3. Depending on the requirement and the workload from flight to flight and season to season the management had utilized services of some persons on purely temporary and casual basis to assist the permanent loaders wherever and whenever necessary. These casual loaders assisted the passengers with their luggage at the check in counters. Most passengers normally handle their luggage themselves. Sometimes elderly or handicapped passengers are also traveling and on such occasions the casual loaders provide the necessary assistance in handling their luggage, pushing the wheel chairs whenever necessary. Sometimes the baggage is mishandled also the casual loaders assist the staff in depositing the mishandled baggage in the Customs Warehouse. The number of casual loaders keeps on varying.

4. The claimant was one such casual loader working purely on temporary and casual basis from time to time in the exigencies of work on flight to flight basis. Like other casual loaders he was paid a fixed amount per flight. The management was under no obligation to provide work to the claimant on each flight and similarly it was not obligatory on the part of the claimant to be available for duty on each flight.

5. The contention of the claimant that he had worked as C.I.Q. (Custom Investigation Question Clerk) for about a year is absolutely misconceived, baseless and incorrect and hence denied. There is no designation as a C.I.Q. Clerk in existence or ever existed. So the question of his working as a C.I.Q. Clerk did not and could not arise.

That it is submitted that all International Airlines all over the world take the assistance of local Ground Handling Agents to carryout several functions of the Airlines Operations including those being handled by permanent loaders. M/s. Cambata Aviation (P) Limited are the official Ground Handling Agents officially allowed by International Airport Authority of India to take contracts with International Airlines. The Ground Handling Agents provide necessary equipments and manpower to assist the Airlines in the areas where the requirement is not permanent in nature and is intermittent and sporadic in nature depending on the frequency of flights. The management in the month of January, 1995 had discussed the matter with the casual loaders and they were informed that in view of entrusting the work to M/s. Cambata Aviation (P) Limited, it would not be possible to provide them work. They were also informed that the management has already discussed the matter with M/s. Cambata Aviation (P) Limited, New Delhi and they have been kind enough to offer regular employment on probation to them. All the contentions to the contrary made in the para under reply are denied.

That regarding the contents of para 5 it is not in dispute that the claimant along with seven other casual loader had raised a dispute for regularization of their services before ALC, NCT of Delhi and notice of the same was served on the management. The alleged dispute was totally misconceived and not tenable and did not constitute an industrial dispute within the meaning of the Act and in any event it was without jurisdiction.

That it is however, denied that cessation of service of the claimant whose appointment is on day to day basis amounts to retrenchment. Reliance placed by the claimant on the judgment of the Hon'ble Supreme Court of India is misplaced. The judgment is distinguishable.

That the claimant has been working with the management purely on temporary and day to day and flight to flight basis depending on the requirement and neither the management was under any obligation for the claimant to be available for duty on each flight. The cessation of service of a casual worker, therefore, does not amount to retrenchment and the provisions of Section 25 F of the ID Act, 1947 are not attracted. All other contentions raised in the para under reply are wrong and, therefore, denied.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the Written Statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard arguments from both the sides and perused the papers on the record.

From perusal of the pleading of the parties and the argument raised the following points arise for decision.

1. Whether the workman was discharging duties of regular and continuous nature ?
2. Whether the workman has performed 240 days duties in between 1989 and 1995?
3. Whether the workman is entitled to reinstatement?
4. Amount of back wages to be paid to the workman or not?

Point No.1: It was submitted from the side of the workman that he was discharging continuous nature of work as a Loader and sometimes as Customs Investigation Question Clerk from December, 1989 upto 14-8-1995. The work is of permanent and perennial nature. He was engaged on flights everyday.

It was submitted from the side of the management that the workman was a Loader purely on temporary and casual basis and he has no right to the post. He worked on day to day basis.

It was further submitted that out of 8 Casual Loaders 7 settled their claims, dues and disputes with the management by entering into a memorandum of settlement in accordance with the provision of the ID Act, 1947 and Rules framed thereunder. The dispute raised by the workman is absolutely false. It is bad in law and misconceived.

It was further submitted that the management is an Airlines Corporation and is engaged in the business of carrying Passengers and Cargo. It operates various flights. The management has employed sufficient number of permanent Loaders in driving vehicles, monitoring safety of passengers etc. The Casual Loaders assist these permanent Loaders. The claimant is one of such Casual Loaders.

It was submitted that all the International Airlines all over the World take the assistance of Local Ground Handling Agents to carryout several functions of Airlines operations including those being handled hy permanent Loaders.

It was further submitted that M/s. Cambata Aviation (P) Limited are the official Ground Handling Agents officially allowed by International Airport Authority of

India to take contract with International Airlines. The Ground Handling Agents provide necessary equipment and manpower to assist the Airlines in the areas where the requirement is not permanent in nature and is intermittent and is sporadic in nature depending on the frequency of flights. The management took the services of M/s. Cambata Aviation (P) Limited for Ground Handling Services.

It was submitted from the side of the workman that MW1 has admitted that 7 workmen entered into compromise and retrenchment compensation was paid to them and all the 7 employees were engaged by M/s. Cambata Aviation (P) Limited. The management has admitted that 7 Casual Loaders were taken on rolls of M/s. Cambata Aviation (P) Limited. It proves the fact that the work is of continuous and regular nature. M/s. Cambata Aviation (P) Limited is still Incharge of Ground Handling. This proves that the work is of continuous and regular nature. After retrenching this workman the management entered into agreement with Cambata Aviation (P) Limited for discharge of the duties of Casual Loaders.

It is settled law that Contracting Agency cannot be employed work of perennial and regular in nature and of sufficient duration. The workman of M/s. Cambata Aviation (P) Limited are still discharging the duties of the Casual Loaders. M/s. Cambata Aviation (P) Limited absorbed at-least 7 workmen out of the Casual Loaders and gave them regular appointment. M/s. Cambata Aviation (P) Limited is a Contracting Agency. It can supply equipments and other things on contract basis but as per the law prevalent in this Country human labour cannot be supplied by any Contracting Agency. Contract is held sham, for discharging duties perennial and continuous in nature. It is provided in Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 that:—

Section 10: prohibition of employment of Contract Labour: (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board, or as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2). Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as :—

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

It becomes quite obvious that contract employees cannot be taken in case process operation and other work is incidental to or necessary for the Industry or if the work is of perennial nature or of sufficient duration and where it is done ordinarily through regular workmen in that establishment.

It is admitted case of the management that casual loaders were employed but M/s. Cambata Aviation (P) Limited is official Ground Handling Agents so the respondents took their services and they supplied manpower. Since the work of loading, unloading is of perennial nature and of sufficient duration and permanent loaders have been engaged by the management, they cannot get such work done by any contracting agency. The work performed by this casual loader is of continuous and regular nature. This point is decided accordingly.

Point No.2. It is submitted that the matter was negotiated and the workman also took part in negotiations and he was offered retrenchment compensation of Rs. 30,000 (Rs. Thirty Thousand). He signed the settlement but thereafter he refused to take compensation of Rs. 30,000 (Rs. Thirty Thousand). This fact indicates that the workman was in the employment of the management. In Conciliation Proceedings the name and period of joining of 8 casual loaders has been mentioned. 7 of these casual loaders have been paid compensation. This workman refused to take compensation as it many not be as per rules.

The workman has filed Ex. MW1/10 for adjudication and settlement of the dispute. It has been specifically mentioned that Shri Salim Khan joined in December, 1989. It was submitted that the respondents filed reply to the notice of ALC (C), New Delhi. In that reply they have admitted that the workman was engaged as casual loader from time to time and the dispute is delayed. Two judgments have been cited on the point of delay even in the reply to the dispute.

Engagement of the workman is admitted by the management. The admitted case of the management is that they have been engaged as casual loaders since 1986 as BCAS insisted that Ground Handling work should not be done by contracting agency. So they engaged casual loaders from 1986 to 1995, they removed them when the Government permitted them to engage Ground Handling Agents. So the casual loaders have been engaged by the management admittedly. The workman Shri Salim Khan has filed Gate Pass, Paper No. 264 to B 276. These Gate Passes relate to period 1991. His engagement from 1989 is proved as the pleading before the ALC (C) has not been challenged by the management. The management has admitted that they were temporary casual loaders. So it is impliedly

proved that the management has engaged the workman in December, 1989. The workman has filed paper No. 277 to 297. Payments made to him on documents of British Airways, New Delhi from February, 1993 to December, 1994.

It was submitted from the side of the management that these papers are forged and fabricated. It is admitted case of the management that attendance of the workman was taken on loose sheets and payment to them was also made on loose sheets. In some of these loose sheets original number of Register of (Form - B) employees British Airways, New Delhi figure. The number of paper 49,40,37,38 and 39 have been printed. It is admitted case of the management that payment to the workman was made on loose sheets. The management has denied these papers but no other loose sheets have been filed by the management to falsify these papers. These papers bear the original number of the register. In case the loose sheets were not issued by the management, the same should have been confronted and contradicted with the original ones. The management has not filed any original sheet whereas it is admitted that payments have been made on original sheets. Some variance in the papers filed before the ALC(C) and this Court were pointed out by the management. It appears that this workman has procured photocopy of these loose sheets prior to making payment so these papers lack stamp. But all the loose sheets bear the original number of the register Form - B.

The management should have filed the original sheets and proved the photocopy forged. This workman cannot be deemed in possession of the original sheets of payment register.

It was submitted from the side of the management that this workman has admitted that payment was made on loose sheets. The attendance was also taken on loose sheets and the case of the management is that payments were made on loose sheets. The original loose sheets are in possession of the management but the same have been withheld and concealed.

It was submitted from the side of the management that it is settled law that onus of proving 240 days cannot be shifted on the management. The workman has to prove by independent and documentary evidence that he has worked for 240 days. The management has cited 2002 LLR page 339, 2004 LLR Page 1022, 2005 LLR 737 and several other judgments on this point. It is settled law that the workman has to prove that he has performed 240 days work with cogent documentary evidence. Mere assertion in the affidavit is not sufficient. It is also settled law that it is the duty of the workman to prove that he has worked for 240 days not merely on the basis of his assertion in the photocopy but by cogent documentary evidence. In the instant case the workman has filed photocopy of loose sheets of attendance and payment. The attendance is admittedly taken on loose sheets and payment is also made on loose sheets. It was the duty of the management to produce the original loose sheets and to prove the photocopy filed by the workman forged and fabricated. No original loose sheets have been filed so the photocopies are admitted in evidence and they are sufficient to prove that the workman has worked for 240 days in 1990, 1991, 1992, 1993 and even in 1994.

It was submitted from the side of the workman that it was the duty of the management to maintain muster roll register when casual loaders are engaged. It is the duty of the employer to maintain muster roll of the workman in view of Section 25 - D of the ID Act, 1947. It has been specifically stipulated in the section that it shall be the duty of every employer to maintain muster roll register for the purpose of this Chapter and to provide for making the entries therein by the workman. The management has malafidely not maintained muster roll register. So an intentional breach of Section 25 - D of the ID Act, 1947 has been committed. The management has been engaging casual loaders from 1986 to 1995 but no register of muster roll has been maintained by the management.

It was submitted from the side of the workman that the management has not maintained muster roll register U/s. 25 - D of the ID Act, 1947 deliberately to subvert the benign provision of the ID Act, 1947. The management has acted malafidely to get rid of the rigours of the ID Act and to deprive the workman of the benefits of regular employment.

The workman has proved successfully on the basis of photocopies of loose sheets and implied admission of the management that he was engaged from December, 1989 and he was retrenched in August, 1995. The workman has performed 240 days duty in 3 or 4 years in the intervening period. The workman has performed 240 days in 1990, 1991, 1992, 1993 & 1994. This point is decided accordingly.

Point No.3. It was submitted from the side of the workman that he has worked for 240 days. Section 25 F postulates that in case the work is of continuous and regular nature and the workman has worked continuously for 240 days he cannot be retrenched without payment of one month's pay in lieu of notice and retrenchment compensation. The workman has not been paid retrenchment compensation and one month's pay in lieu of notice.

My attention was drawn by the Ld. Counsel of the workman to 2000 LLR 523 State of UP and Rajender Singh. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1315. The Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25 F are not complied. In the instant case no compensation

has been paid to the workman who has continuously worked for 6 years.

It was submitted that the management has committed unfair labour practice by engaging casual and temporaries again and again. It is a penal provision.

It was further submitted that Section 25 T provides that the management should not indulge in unfair labour practice. Section 25 U provides that a person who commits any unfair labour practice will be punishable with imprisonment for a term which may extend to six months or with fine, which may extend to Rs.1 000 or with both. The intention of the legislature in enacting 25 T & 25 U is obvious. The legislature wanted that in case Casual and Badlis are engaged for a long period, it amounts to unfair labour practice. There is punitive clause for committing unfair labour practice.

It was submitted from the side of the workman that Vth Schedule of the ID Act specifies some practices as unfair labour practice. The Vth Schedule clause 10 provides the criteria for ascertaining unfair labour practice. It is extracted as hereunder:

"To employ workman as Badlis, Casuals or Temporaries and to continue them as such for years with the object of depriving them of the status and privilege of a permanent workman."

Clause 10 of the Vth Schedule stipulates that in case the workmen are employed as Casuals, Badlis or Temporary and they are continued as such for years, it will amount to unfair labour practice. In the instant case the workman has been continued as casual and temporary for 6 years. It establishes to the hilt that the respondent management has committed unfair labour practice. The workman has been engaged for 8 years as casual and temporary and thereafter he has been removed. He has not been paid retrenchment compensation.

In case retrenchment compensation is not paid Section 25 F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of Section 25 F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed unnecessarily so Section 25 F, U, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workman should not be engaged for years and then he should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid at the time of retrenchment.

It has been held in AIR 1980 SC 1219 that the purpose of paying retrenchment compensation is to mitigate the distress of a workman who has put in more than 240 days of continuous service who is suddenly thrown out of employment and give enough sustenance power until he seeks alternative employment.

It has been held in 1994 - II LLJ - 378 as under :—

"The Industrial Disputes Act stands on a different footing than the common law. The Act is mainly meant to resolve the disputes arising between the employer and the employee, in the manner provided under the Act and to protect the just interest of the labour; while deciding cases when question of legality of retrenchment arises.

The management should have paid one month's pay in lieu of notice and retrenchment compensation at the time of retrenchment. In case it is not paid simultaneously with retrenchment order, the retrenchment does not become valid and operative. The workman shall be deemed to be in service in the eye of law.

Offering of retrenchment compensation at a later stage during the conciliation proceedings or at any later stage will not make void retrenchment valid. In the instant case retrenchment was offered during the conciliation proceedings but that has not been accepted by the workman. The retrenchment compensation is to be paid along with the order of retrenchment and not at any later stage. The management has not effected proper retrenchment.

The management is run under the authority of Central Government. It is controlled industry. The management has to act under the provision of the ID Act, 1947.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision the labour court has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The workman has proved that he has worked for 240 days so he is entitled to one month's pay in lieu of notice and retrenchment compensation. Retrenchment compensation has not been paid to him while terminating his services. Retrenchment is not effected validly in case pay in lieu of one month's notice and retrenchment compensation has not been paid to the workman at the time of retrenchment. This workman has not received any retrenchment compensation so he is entitled to reinstatement. This point is decided accordingly.

Point No.4. It was submitted that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in

(2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages. In the instant case the matter involved was a case of theft of large quantity of Aluminium Wire. Departmental inquiry was not conducted in accordance with the principles of natural justice so dismissal was found bad. In such circumstance the Hon'ble Apex Court held that the order for payment of full back wages was not justified if termination is set aside. In PGI Vs. Raj Kumar (2001) 2 SCC 54 the Hon'ble Apex Court upheld the 60% award of back wages of the Tribunal.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workman in raising the dispute.

In 1978 Lab IC 1968—three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer.

In AIR 2002 SC 1313 the Hon 'ble Apex Court reduced the back wages to 25%.

In 2005 IV AD SC 39—three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

A three Judges bench of the Hon'ble Apex Court has held in 1993 II - LLJ that termination of services affects the livelihood of not only of the employee. But also of the dependents. So in case of illegal termination of service the workman should be reinstated.

Reinstatement should not be misconceived as regularization. By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his illegal dis-engagement. This is a special remedy provided in ID Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court. The provisions of the ID Act are still constitutional and they are to be given effect too.

In such cases the workman is reinstated with back wages and the respondents have every right, after payment of back wages and reinstatement, to retrench him validly following the principles of first come last go so that section 25, G & H of the ID Act are not violated.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11 A of the ID Act, 1947 provides that in case dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

It is of course true that full wages do not follow reinstatement automatically and mechanically. No precise formula can be laid down as to when full back wages can be allowed. It depends on facts and circumstances of each case. Full back wages should not be allowed mechanically or automatically or as natural consequence.

It was submitted from the side of the management that the workman has not pointed out that he is not gainfully employed. The workman has admitted that he did some work off and on. The workman is not gainfully employed in any establishment. He is a manual worker. He must be doing some sort of work intermittently for his subsistence. The plea of unemployment has been taken subsequently. It might have been overlooked while filing claim statement.

It was further submitted that the workman has contributed little or nothing at all after his retrenchment. It was the management who prevented the workman from working. In the reacts and circumstances of the case it is held that 25% back wages will meet the ends of justice.

The reference is replied thus:

The action of the management of British Airways in terminating the services of Shri Salim Khan, Casual Loader w.e.f. 14-8-1995 is neither just nor fair nor legal. The workman is entitled to be reinstated along with 25% back wages. The management is directed to reinstate the workman and pay him 25% back wages within two months from publication of the award.

Award is given accordingly.

Date 9-11-2006 R.N. RAI, Presiding Officer

नई दिल्ली, 17 नवम्बर, 2006

का.आ. 4772.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैन्टोनमेन्ट बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं.-II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/97 ऑफ 2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-11-06 को प्राप्त हुआ था।

[सं. एल-13011/5/2000-आई आर (डी यू)]

सुरेन्द्र सिंह, डैस्क अधिकारी

New Delhi, the 17th November, 2006

S.O. 4772.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/97 of 2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Cantonment Board and their workman, which was received by the Central Government on 17-11-2006.

[No. L-13011/5/2000-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT

A. A. Lad, Presiding Officer

Reference : CGIT-2/97 of 2000

Employers in relation to the Management of Cantonment Board

The Cantonment Executive Officer,
C/o. The Cantonment Board,
Ministry of Defence, Deolali-422 401

AND

Their Workman

Mr. Sunil Fakira Marsale,
Room No. 281, Block No. 36,
Nehru Nagar, Nashik Road-422 101

APPARANCES

For the Employer : S/Shri S. N. Bubale, Shailesh Naidu, Yogesh Naidu, Manoj Gujar, Manoj Desai, Advocate

For the Workmen : Mr. M. B. Anchan, Advocate

Date of reserving Award : 4th September, 2006

Date of Passing of Award : 19th October, 2006

AWARD

The matrix of the facts as culled out from the proceeding are as under :

1. The Government of India, Ministry of Labour, by its Order No. L-13011/5/2000/IR(DU) dated 28th September, 2000 in exercise of powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, have referred the following Industrial Distpute to this Tribunal for adjudication :

> "Whether the action of the management of Cantonment Board, Deolali in terminating the employment of Mr. Sunil Fakira Marsale, casual labour w.e.f. 1-8-99 is legal and justified? If not, to what relief the workman concerned is entitled?"

2. Second Party Union, filed Statement of Claim at Exhibit-18 to support the claim referred in the reference stating and contending that, he was appointed by the 1st Party as a Chemical Mazdoor on 5th April, 1999. He worked with it till 1-8-1999. However, his services were terminated without following due process of law and without assigning any reason. In his place other employee was appointed. So it is sumbitted that, the action of the 1st Party in terminating 2nd Party be treated as illegal and unjustifiable with directions to the 1st Party to reinstate him with benefits of backwages and continuity of service.

3. The said claim of the 2nd Party is disputed by the 1st Party by filling its say at Exhibit 19 stating and contending that, 2nd Party was never appointed as a Chemical Mazdoor. He was taken on temporary basis in employment and there was no employee employer relationship between the 1st Party and the 2nd Party. As soon as work ceased he was terminated. He cannot claim permanency. He is not qualified to work as a Chemical Mazdoor. Since he was appointed on daily wages and sicne no work is available, it is stated that, the prayer of resintatement does not arise.

4. In view of the above pleadings my Ld. Predecessor framed the following Issues at Exhibit 22 which I answer as under :

	Issues	Findings
(1)	Whether the action of the Management of Cantonment Board, Devlali in terminating the employment of Mr. Sunil Marsale w.e.f. 1-8-99 is legal and Justified?	Does not arise
(2)	If not, what relief Shri Marsale is entitled to?	Does not survive

REASONS :

5. 2nd Party states that he was appointed as Chemcial Mazdoor from 5th April, 1999 to 1-8-1999. He was not paid his dues for July, 1999. Without following due process of law, his services were terminated w.e.f. 1st August, 1999 when he demanded his said dues. Even notice was not given and his legal due were not paid. Whereas case of the 1st Party is that, he was taken on daily wages. He is not qualified to work as Chemcial Mazdoor. No work is available and as such he cannot be taken in the employment. Besides it has no power to make employees permanent as prayed by the 2nd Party.

6. To support that 2nd Party relied on his affidavit filed at Exhibit 29 and 1st Party of its employee Rameshchandra Yadav filed at Exhibit 34.

7. 2nd Party in the cross-examination admits that he worked with the 1st Party from 5th April, 1999 to 31st July, 1999. He was taken as a casual labourer. He applied for Chemcial Mazdoor as per the advertisement published in

Lokmatt dated 17-10-1998 filed at Exhibit 17 (page 4). He was not having experience of that work at that time. He admits that, he worked from 5th April, 1999 to 31st July, 1999. He admits that, no appointment was given to him. He admits that he has no evidence to show that he worked as permanent workman with 1st Party's and was getting salary of Rs. 49/- per day. Whereas 1st Party's witness in the cross states that, post of Chemical Mazdoor was advertised and 2nd Party applied for the said post. So this is the evidence to support the claim of the 2nd party.

8. It is a matter of record that, 2nd Party has no evidence to show that, he worked for 1st Party and 1st Party gave an appointment letter to him. On the contrary evidence reveals that, he was taken on daily wages and was never treated as a permanent employee. Besides, he did not work for 240 days. Admittedly he worked with first Party from 5th April, 1999 to 31st July, 1999. That means for few months. When he worked for few months and does not have qualifications and proof of working with 1st Party on permanent basis, in my considered view, he is not entitled to claim permanency as sought in the statement of claim. So I conclude that 2nd Party is not entitled for permanency. Besides, when he was on daily wages question of following due process of law does not arise and question of terminating him also. So I answer the above issues to that effect and passing the following order :

ORDER

Reference is rejected with no order as to its cost.

Mumbai,
19th October, 2006. A. A. LAD, Presiding Officer

नई दिल्ली, 17 नवम्बर, 2006

का.आ. 4773.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैरीन इंजीनियरिंग एण्ड रिसर्च इंस्टिट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं.-II, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/61 ऑफ 2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-11-06 को प्राप्त हुआ था।

[सं. एल-42011/23/2000-आई आर (डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 17th November, 2006

S.O. 4773.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/61 of 2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Marine Engineering and Research Institute and their workmen, which was received by the Central Government on 17-11-2006.

[No. L-42011/23/2000-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERMMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT

A. A. Lad, Presiding Officer

Reference No. : CGIT-2/61 of 2000

Employers in relation to the Management of Marine Engineering and Research Institute

The Director
Marine Engineering and Research Institute
DMET Hostel Mess,
Hay Bunder Road, Sewree,
Mumbai-400 033

AND

Their Workman

The General Secretary,
Bhartiya Kamgar Sena,
Shivsena Bhavan,
Gadkari Chowk, Dadar,
Mumbai-400 028.

APPEARANCE

For the Employer : Mr. B. M. Masurkar, Advocate
For the Workmen : Mr. B. J. Sawant, Advocate

Date of passing of Award : 22nd September, 2006

AWARD

1. The Government of India, Ministry of Labour by its Order No. L-42011/23/2000/IR(DU) dated 07-07-2000 in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Marine Engineering Research Institute, Mumbai in not paying the wages as per the Rules and also not regularizing the services of the 22 workmen (List enclosed) is justified ? If not, to what relief those 22 workers are entitled ?"

List of Workmen

Sr.No.	Name of workmen
1.	Mr. Newrekar P. Vithoba
2.	Mr. Kole Keraba Ganu
3.	Mr. Shiwdankar R. Nagoji
4.	Mr. Dhumale Yamaji Lakhu
5.	Mr. Patil Mahadeo Balu
6.	Mr. Ghwde Ganesh Mahadeo
7.	Mr. Khot Pandurang Babu
8.	Mr. Pate Arun Chandrakant
9.	Mr. Kadam Prakash Dagadu

Sr.No.	Name of workmen
10.	Mr. Chavan Nitin Ravindra
11.	Mr. Waigade Somnath Dajiba
12.	Mr. Jadhav D. Sahadeo
13.	Mr. Mungurkar Appa Rama
14.	Mr. Gore Ganpat Yashvant
15.	Mr. Mangle Ravindra Laxman
16.	Mr. Patil Anand Sadashiv
17.	Mr. Ingawale Lahu Nagoji
18.	Mr. Dhumale Parsu Narsu
19.	Mr. Polkar Uttam Ganpat
20.	Mr. Patekar Arun Janu
21.	Mr. Gore Balu Uashwant
22.	Miss Meenakshi R. Mahadik

2. In support of the said subject referred in the Reference, Second party filed Statement of Claim at Ex. 8. It was replied by first party by filing Written Statement at Ex.-10. My Ld. Predecessor framed issues at Exhibit-16 on the basis of the pleadings. The reference was posted for recording of evidence on the issues.

3. Reference was taken in Lok Adalat held on 22-9-2006. Both parties arrived to settlement as per Exhibit-28. Accordingly, reference is disposed of by passing following order :

ORDER

In view of purshis Ex. 28, reference is disposed of.

Mumbai Dated 22-09-2006

A. A. LAD, Presiding Officer

Ex. 28

Before the Lok Adalat dated 22-09-2006

Ref. No. CGIT-2/61 of 2000

Marine Engineering Research Institute

And

Their workmen

Adv. S. B. Kadam — For Management

Adv. B. J. Sawant — For Workmen

The matter is settled as the workmen received their dues as claimed and the parties filed purshis dated 22-9-2006 to that effect.

Sd/- (For Management) Sd/- (For workmen)

Sd/- (Panel member) Sd/- (V. Narayanan) Panel Member

Sd/- (J. H. Sawant) Panel Member Sd/- (A. M. Koyande) Panel Member

नई दिल्ली, 17 नवम्बर, 2006

का.आ. 4774.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेंडेंट ऑफ पोस्ट आफिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-11-06 को प्राप्त हुआ था।

[सं. एल-40011/6/94-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 17th November, 2006

S.O. 4774.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Supdt. of Post Office and their workman, which was received by the Central Government on 17-11-2006.

[No. L-40011/6/94-IR (DU)]

SURENDRA SINGH, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राज./ पीठासीन अधिकारी

के. के. गुप्ता, आर.एच.जे.एस.

रेफ्रेन्स प्रकरण क्रमशः श्र.न्या./केन्द्रीय/8/95

दिनांक स्थापित : 12-5-95 व बाजदायर दि. 7-1-02

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश संख्या एल. 40011/6/94/आई.आर. (डी.यू.) दि. 5-5-95

रेफ्रेरेंस अन्तर्गत धारा 10(1)(घ)

औद्योगिक विवाद अधिनियम, 1947

मध्य

1. अरविंद कुमार शर्मा पुत्र श्री राजमल निवासी जलोदा तह. केशोरायपाटन जिला बून्दी ।

2. भगवान प्रसाद पुत्र श्री ग्यारसीलाल निवासी बौरखंडी जिला बून्दी ।

.....प्रार्थीगण श्रमिक

एवं

अधीक्षक, डाकघर टोंक डिवीजन, टोंक/राजस्थान ।

....अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण दोनों की ओर से : 1. श्री एस. एन. गुप्ता

प्रतिनिधि क्रमशः एवं

2. श्री आर. एस. शर्मा

अप्रार्थी नियोजक की ओर से : श्री सी. बी. सौरव

अधिनिर्णय दिनांक : 6-10-06

अधिनिर्णय :

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा अपनी उक्त प्रारम्भिक आदेश दि. 5-5-95 के जरिये निम्न निर्देश (रेफेरेंस) औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जायेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :-

> "Whether the action of the management of the Supdt. of Post Office, Tonk Division, Tonk (Rajasthan) in terminating the services of Shri Arvind Kumar Sharma S/o Rajmal and Bhagwan Prasad Sharma S/o Shri Gyarsi Lal w.e.f. 4-7-1992 and 20-12-1992 respectively is proper legal and justified? If not, to what relief the workman is entitled to?"

2. सर्वप्रथम यहां यह उल्लेख किया जाना उचित होगा कि न्यायाधिकरण द्वारा इस मामले में पूर्व में पक्षकारों को सुना जाकर दिनांक 21-9-2000 को अधिनियम पारित किया गया था जिस अधिनिर्णय को माननीय उच्च न्यायालय द्वारा एस. बी. सिविल रिट पिटि. सं. 2652/2000 में पारित आदेश दि. 21-8-2001 के द्वारा अपास्त करते हुए यह निर्देश दिये गये कि माननीय उच्चतम न्यायालय को वृहत पीठ के निर्णय "1997 1 ए.डी.एस.सी. 12-जनरल मैनेजर, टेलीकाम बनाम एस. श्रीनिवास राय" के परिप्रेक्ष्य मे रेफेरेंस मामले को उसके मूल नम्बर पर स्थापित कर दोनों पक्षों को सुना जाकर विधि अनुसार पुन: अधिनिर्णय पारित करें । अत: पत्रावली पुन: पुराने नम्बर पर दर्ज कर सुनवाई प्रारम्भ की गयी ।

3. यह रेफेरेंस समुचित सरकार द्वारा दो प्रार्थीय श्रमिक सर्वश्री अरविन्द एवं भगवान प्रसाद को अलग-अलग तिथियों से अप्रार्थी नियोजक द्वारा सेवा से पृथक किये जाने की उचितता अथवा अनुचितता के बिन्दु के अधिनिर्णयार्थ इस न्यायाधिकरण को सम्प्रेषित किया गया है । प्रार्थी श्रमिक अरविन्द कुमार शर्मा की ओर से क्लेम स्टेटमेंट प्रस्तुत कर संक्षेप में यह अभिकथित किया गया है कि वह अप्रार्थीगण 1-निरीक्षक,डाक विभाग, पोस्ट आफिस बूंदी एवं 2-अधीक्षक डाक विभाग, टोंक मंडल पोस्ट आफिस, टोंक की ग्राम जालोदा में अपनी अधीनस्थ शाखा पर बी.पी.एम. व ई.डी.एम.सी. के पद पर कार्य करता था और उसने 15-10-90 से 4-12-91 व तुदपरान्त 13-5-92 से 3-7-92 तक निरन्तर कार्य किया और एक वर्ष में स्थायी सेवा अवधि पूर्ण करने पर वह नियमित कर्मचारी की श्रेणी में आता है तथापि उसे नियमित कर्मचारी की सेवा उपलब्ध नहीं करवाकर अधिनियम के प्रावधानों के विपरीत बिना एक माह का नोटिस अथवा नोटिस वेतन व छंटनी मुआवजा दिये दि. 3-7-92 से सेवा से पृथक कर दिया और उसके स्थान पर अन्य व्यक्ति को कार्य पर लगा लिया । यह भी अभिकथित किया गया है कि अप्रर्थीगण द्वारा अधिनियम की धारा 25-एफ. जी. एच. व आई के विपरीत कृत्य किया गया है। प्रार्थी, अप्रार्थीगण के यहां 353 रु. प्रतिमाह वेतन प्राप्त करता था और सेवा पृथक उपरान्त पूर्ण रूप से बेरोजगार हो गया है। तथा कहीं कोई कार्य नहीं कर रहा है । अत: उसे उक्त, प्रकार से सेवा से पृथक किया जाना अनुचित एवं अवैध घोषित करते हुए पिछले सम्पूर्ण वेतन व समस्त लाभों सहित सेवा में लिये जाने का अनुतोष प्रदान किया जावे ।

4. अप्रार्थीगण की ओर से उक्त क्लेम का जबाव प्रस्तुत करते हुए प्रतिवाद स्वरूप यह अभिकथित किया गया है कि राजमल पंचोली शाखा डाकपाल जलोदा (कापरेन) के पद पर दि. 19-12-63 से कार्यरत थे । जिन्होंने दि. 15-10-90 से अपने एवजी प्रार्थी अरविन्द कुमार को नियुक्त कर दिया और बिना पूर्व स्वीकृति के स्वेच्छा से अवकाश पर चले गये । एवजी के रूप में प्रार्थी अरविन्द ने 15-10-90 से 4-12-91 तक कार्य किया । श्री राजमल पंचोली के बिना पूर्व अनुमति के अनुपस्थित रहने के कारण नियमानुसार जांच. कार्यवाही उपरान्त दि. 24-4-92 को सेवा से निष्कासन का दंडादेश दिया और रिक्त पद पर अस्थायी व्यवस्था हेतु प्रार्थी अरविन्द कुमार को लगाया व नियमित नियुक्ति हेतु प्रक्रिया प्रारम्भ की गयी । दि. 23-6-92 को जिला रोजगार कार्यालय से प्राप्त पैनल में से एक अप्रार्थी का चयन किया गया और 4-7-92 को प्रार्थी अरविन्द कुमार से चार्ज लेकर नियमित नियुक्त हुए हरिओम शर्मा को शाखा डाकपाल का चार्ज संभला दिया गया । चूंकि रोजगार कार्यालय से प्राप्त पैनल में प्रार्थी का नाम नहीं था इसलिए उसके नाम पर विचार नहीं किया गया, तथापि प्रार्थी ने नियमित नियुक्ति हेतु वाद प्रस्तुत किया। प्रार्थी ने राजमल पंचोली के एवजी में कार्य किया था और वह स्थायी/अस्थायी या किसी भी प्रकार से तदर्थ व्यवस्था के अन्तर्गत कार्यरत नही था अत: शाखा डाकपाल के पद का दावा करना अनुचित व विधिशून्य है । प्रार्थी द्वारा स्थायी सेवा की बात करना अनुचित है वह केवल मात्र राजमल की जिम्मेवारी पर बतौर एवजी कार्यरत था, इस कारण किसी भी स्थायी सेवा का लाभ प्राप्त करने का अधिकारी नहीं है और नाही अप्रार्थी विभग के अवि.ऐजेन्ट (सेवा) आचरण, नियमावली 1964 के अन्तर्गत शामिल होता है । इसके अतिरिक्त डाक विभाग मे कार्यरत अ.वि. कर्मचारी पर अधिनियम के प्रावधान लागू नहीं होते हैं, इस कारण नोटिस अथवा नोटिस वेतन व मुआवजा आदि दिये जाने का कोई औचित्य नहीं है । अन्त में प्रार्थना की गयी है कि प्रार्थी का सम्पूर्ण क्लेम निराधार व गलत होने से अस्वीकार कर निरस्त किया जावे ।

5. दूसरे प्रार्थी भगवान प्रसाद की ओर से क्लेम स्टेटमेन्ट पृथक से प्रस्तुत कर यह अभिकथित किया गया है कि उसे प्रार्थी अधिक्षक, डाकघर टौंक द्वारा दिनांक 28-4-92 से डाकपाल के पद पर नियुक्त किया गया था तब से दिनांक 28-12-93 तक उसने निरन्तर कार्य करते हुए एक कलेण्डर वर्ष में 240 दिन से भी अधिक समय तक कार्य किया है तथापि उसे सेवा से पृथक किये जाने से पूर्व दिनांक 28-12-93 से बिना नोटिस अथवा नोटिस वेतन छटनी मुवावजा दिये व बिना वरिष्ठता सूची का प्रकाशनार्थ देय उसे सेवा से पृथक कर दिया और उसके स्थान पर एक अन्य व्यक्ति रमेशचन्द्र शर्मा को नियोजित कर लिया । अन्त में प्रार्थना की गयी है कि प्रार्थी को उक्त प्रकार से सेवा से पृथक किया जाना अनुचित एवं अवैध घोषित करते हुए पिछले सम्पूर्ण वेतन व समस्त लाभों सहित सेवा में लिये जाने का अनुतोष प्रदान किया जावे ।

6. अप्रार्थी नियोजक की ओर से प्रार्थी भगवान प्रसाद के उक्त क्लेम का जवाब प्रस्तुत करते हुए प्रतिवाद स्वरूप यह अभिकथित

किया गया है कि दिनांक 28-4-92 को बौरखण्डी में एक नये अतिरिक्त विभागीय शाखा डाकघर पर प्रार्थी भगवान प्रसाद शर्मा को उसके प्रार्थना-पत्र के आधार पर प्रोवीजनल तौर पर अतिविभागीय शाखा-डाकपाल के लिए लगाया गया था, भारग्रहण चार्ज रिर्पोट दिनांक 28-4-92 पर स्पस्ट रूप से प्रोवीजनल शब्द लिखा हुआ है। अतिविभागीय शाखा डाकपाल बौरखण्डी की नियमित नियुक्ति हेतु जिला नियोजन कार्यालय बून्दी को 12-5-92 को विभाग द्वारा लिखा गया था जिस पर 14 अपराधियों के नामों की सूची प्राप्त हुई जिन्हें 4-6-92 को आवेदन-पत्र प्रेषित करने हेतु लिखा गया। उक्त चयन प्रक्रिया के पूर्ण होने तक की अवधि के लिए प्रार्थी को प्रोवीजनल नियुक्ति के आदेश दिये थे और इस प्रकार उसे 28-4-72 से 27-10-92 तक के लिए नियुक्त किया गया व अस्थायी नियुक्ति 20-11-92 तक बढ़ायी गयी। विभागीय नियमानुसार किसी भी अभ्यर्थी के नाम अचल सम्पत्ति ना होने से 26-3-93 को पुन: विज्ञप्ति जारी की गयी। चूंकि प्रार्थी का प्रार्थना-पत्र दिनांक 16-6-92 को प्राप्त हुआ था किन्तु उसके नाम पर भी अचल सम्पत्ति ना पाये जाने से उसकी नियुक्ति नियमित नहीं की गयी। पुन: विज्ञप्ति जारी होने पर दो प्रार्थना-पत्र प्राप्त हुए जिसमें रमेशचन्द्र शर्मा का दिनांक 1-12-93 को चयन किया गया तथा प्रार्थी भगवान प्रसाद शर्मा के स्वयं के नाम कोई सम्पत्ति ना होने से इसका चयन नहीं किया गया। अतिरिक्त विभागीय शाखा डाकपाल के लिए पृथक से केन्द्रीय नियम बने हुए हैं और उन पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। प्रार्थी के नाम पर कोई स्थायी सम्पत्ति नहीं होने से वह नियमित नियुक्ति प्राप्त करने का अधिकारी नहीं था इसलिए उसे 28-12-93 को नियमानुसार भार मुक्त किया गया तथा प्रार्थी पर अधिनियम के प्रावधान लागू नहीं होने से वह किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है। अन्त में प्रार्थी का क्लेम निराधार होने से सव्यय निरस्त किये जाने की प्रार्थना की गयी है।

7. साक्ष्य में प्रार्थी श्रमिक अरविन्द कुमार शर्मा व प्रार्थी भगवान प्रसाद की ओर से अपने-अपने शपथ-पत्र तथा अप्रार्थी नियोजक की ओर से सर्वश्री कल्याणमल सेनी, हेमराज राठौड़, पूआराम शर्मा के शपथ-पत्र प्रस्तुत कर परीक्षित करवाया गया है। पक्षकारों की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी है।

8. बहस पक्षकारों की सुनी गयी, पत्रावली व उपलब्ध साक्ष्य तथा सामग्री का ध्यानपूर्वक परिशीलन किया गया।

9. प्रार्थी अरविंद कुमार शर्मा के प्रतिनिधि का कहना है कि प्रार्थी अरविंद कुमार ने दिनांक 15-10-90 से 4-12-91 तक बी.पी. एम. के पद पर व उसके पश्चात् दिनांक 13-5-92 से 3-7-92 तक अप्रार्थी के अधीन जालोदा कार्यालय में निरन्तर कार्य किया है और वह एक वर्ष की सेवा पूर्ण करने पर स्थायी कर्मचारी हो गया है, उसे बिना एक माह का नोटिस दिये व धारा 25-एफ, जी, एच, आई की पालना किये सेवा से हटा दिया। अप्रार्थी का कथन है कि प्रार्थी अरविंद कुमार के पिता राजमल पंचौली, बी. पी. एम. जालौदा के पद पर दिनांक 19-12-63 से कार्यरत थे। दिनांक 15-10-90 को उन्होने अपने एवजी प्रार्थी अरविंद कुमार को नियुक्त कर दिया व बिना पूर्व स्वीकृति के अवकाश पर चले गये। प्रार्थी अरविंद कुमार ने 15-10-90 से 4-12-91 तक एवजी के रूप में कार्य किया। इसके पश्चात् स्वयं राजमल पंचौली व अरविंद कुमार ने अप्रार्थी को यह लिखित में दिया कि वो इस पद पर कार्य नहीं करना चाहते हैं और राजमल पंचौली ने ही अपने भतीजे हरिओम को अरविंद कुमार के स्थान पर रख दिया। इस तरह जो सेवा प्रार्थी अरविंद कुमार ने एवजी के रूप में की है, वो स्वयं अपनी इच्छा से सेवा छोड़कर चला गया जो सेवाकाल प्रार्थी के नियमित या स्थायी नियुक्ति के लिए अधिनियमान्तर्गत गणन योग्य नहीं है। उनका यह भी कहना है कि प्रार्थी अरविंद कुमार ने वेतन भी राजमल पंचौली के जरिये ही प्राप्त किया है। उनका यह भी कहना है कि प्रार्थी अरविंद कुमार ने प्रदर्श एम. 2 प्रार्थना-पत्र 13-5-92 प्रस्तुत कर यह निवेदन किया था कि वह शाखा डाकपाल, जालौदा के पद पर अस्थायी/प्रोवीजनल के पद पर कार्य करने को तैयार है, जब भी विभाग उसे हटायेगा वह स्वेच्छा से चार्ज देने में किसी प्रकार का एतराज नहीं करेगा, विभाग द्वारा जब भी स्थायी बी. पी. एम. की नियुक्ति होगी, वह उसे चार्ज सौंप देगा। इस पर उसे दिनांक 13-5-92 को उक्त डाकपाल शाखा का चार्ज दिया गया और दिनांक 3-7-92 को उसका चार्ज हरिओम को दिला दिया गया, क्योंकि हरिओम का नियोजन कार्यालय से नाम आने पर उसकी नियमित प्रक्रिया द्वारा नियुक्ति हो गयी थी। उनका यह भी कहना है कि अरविंद कुमार व हरिओम को राजमल पंचौली ने अपने एवजी के रूप में लगाया था और दोनों में से एक व्यक्ति की शाखा जालौदा में नियुक्ति करनी थी, नियोजन कार्यालय से हरिओम का नाम आया और नियमित प्रक्रिया द्वारा उसकी नियुक्त हो गयी। प्रार्थी अरविंद कुमार का नाम ना तो नियोजन कार्यालय से आया और ना ही अरविंद कुमार ने इस पद हेतु अलग से कोई प्रार्थना-पत्र नियुक्ति बाबत प्रस्तुत किया, इस कारण से उसके नाम पर विचार नहीं किया गया, अत: उसको हटाने में कोई त्रुटि नहीं की गयी। उसका यह भी कहना है कि प्रार्थी अरविंद कुमार ने 13-5-92 से 3-7-92 तक जो सेवा की है, वो 240 दिन की पूर्ण नहीं होती है, अत: अधिनियमान्तर्गत उसे कोई संरक्षण प्राप्त नहीं है।

10. प्रार्थी अरविंद कुमार ने अपने शपथ-पत्र में, क्लेम में वर्णित तथ्यों को दोहराया है। जिरह में उसने स्वीकार किया है कि उसके पिता राजमल पंचौली सन् 1963 से डाकघर में काम कर रहे थे, 15-10-90 से बीमार हो जाने के कारण उन्होंने काम करना बन्द कर दिया था और उसे 15-10-90 को काप्रेन वाले पोस्ट मास्टर सा. ने काम संभाला था। आगे कहा है कि मेरे पिताजी ने अर्जी दी थी तो काप्रेन वाले पोस्टमाटर सा. ने कहा था कि आप खुद सक्षम हो किसी को रख लो तो उन्होंने मुझे रख लिया। मैने 4-12-91 तक काम किया था व 4-12-91 के बाद हरिओम शर्मा ने काम किया था। हरिओम शर्मा मेरे ताऊजी का लड़का है। 4-12-91 के बाद मेरे पिताजी ने मुझसे कहा कि अब दूसरा आदमी काम करेगा। मैने एम्पलोईमेन्ट में रजिस्ट्रेशन 89 में करवाया होगा, पूरी तरह से ध्यान नहीं है। अप्रार्थी गवाह हेमराज राठौड़ तत्कालीन निरीक्षक डाकघर, बून्दी में अपने शपथ-पत्र में कहा है कि 19 अप्रैल, 91 से जून, 93 तक वह निरीक्षक डाकघर बून्दी के पद पर कार्यरत था, इस दौरान अति विभागीय शाखा डाकघर जालौदा पर राजमल पंचौली कार्यरत

थे, उन्होने बिना पूर्व स्वीकृति के 15-10-90 को अपनी एवजी में अपने ही पुत्र अरविंद कुमार शर्मा को स्वयं की जिम्मेदारी पर लगा लिया था । दिनांक 4-11-91 को अरविंद कुमार शर्मा ने मेरे को सम्बोधित करते हुए एक प्रार्थना-पत्र प्रेषित किया था कि वो आगे कार्य कर पाने में समर्थ नहीं है, कृपया 20-11-91 तक अवश्य ही पोस्ट आफिस, जालौदा का बीपीएम एव ईडीएमसी का कार्य करने हेतु नये आदमी की व्यवस्था करे, इस पर मैंने स्थायी शाखा डाकपाल राजमल पंचौली को निर्देश दिये कि अरविंद कुमार के कार्य करने से मना करने पर आप अपनी जिम्मेदारी पर अन्य व्यक्ति को लगा दे, तद्नुसार अरविंद कुमार ने अपनी इच्छानुसार शाखा डाकपाल एवजी का पद दिनांक 4-12-91 को छोड़ दिया । जिरह में इसने यह कहा है कि प्रदर्श एम. 2 पत्र हमें 6-11-91 को प्राप्त हुआ था, यह कहना गलत है कि यह पत्र श्रमिक की हेण्डराईटिंग का न हो । चूंकि प्रार्थी अरविंद, राजमल पंचौली का पुत्र था, इस कारण जैसे ही पत्र प्राप्त हुआ, मैंने इन्हें पत्र लिखा और कहा कि आप डाकपाल की व्यवस्था करें । चूंकि राजमल पंचौली ही बी.पी.एम. के पद पर नियुक्त थे इसलिए मैंने पत्र द्वारा निर्देश दिये कि डाक की व्यवस्था बिगड़नी नहीं चाहिए । अप्रार्थी के दूसरे गवाह पूषाराम शर्मा, अधीक्षक डाकघर, टोंक ने भी इन्हीं तथ्यों की पुष्टि की है तथा जिरह में इसने कहा है कि प्रार्थी श्रमिक ने अपने पिता की एवज में 15-10-90 से 4-12-91 तक कार्य किया था और यह भी कहा है कि प्रार्थी श्रमिक अरविंद को उनके द्वारा सेवा से पृथक नहीं किया गया है, उसके द्वारा पत्र प्रदर्श एम.2 के जरिये स्वेच्छा से सेवा का त्याग किया गया है ।

11. इस तरह से सम्पूर्ण साक्ष्य के विश्लेषण से यह साबित होता है कि प्रदर्श एम.1 प्रार्थना-पत्र राजमल पंचौली तत्कालीन बी.पी.एम., जालौदा ने अपने पुत्र अरविंद कुमार के सम्बन्ध में जोकि उसके एवजी में उसकी अस्वस्थता के कारण कार्य कर रहा था, लिखा कि वह अब घरेलु परिस्थितियोंवश आगे कार्य करने में असमर्थ है, दूसरे व्यक्ति की नियुक्ति की जाये । उसी की पुष्टि में प्रदर्श एम.2 प्रार्थना-पत्र प्रार्थी अरविंद कुमार ने भी दिया कि वह अपनी परिस्थितियोंवश आगे कार्य करने में असमर्थ है, दूसरे की व्यवस्था करें । प्रदर्श एम.1 प्रार्थना-पत्र में राजमल पंचौली ने यह भी लिखा है कि दिनांक 6-11-91 के निरीक्षक महोदय के आदेशानुसार अरविंद कुमार का चार्ज हरिओम शर्मा, पुत्र श्री टीकमचन्द्र, निवासी जालौदा को दिनांक 4-12-91 को संभला दिया है, जब तक में स्वस्थ नहीं हो जाऊंगा, श्री हरिओम जी पी.ओ., जालौदा का बी.पी.एम. एण्ड ई.डी. एम.सी. का कार्य मेरी पूर्ण जिम्मेदारी पर करते रहेगें। स्वयं प्रार्थी अरविंद कुमार ने अपनी जिरह में यह स्वीकार किया है कि मेरे पिताजी ने अर्जी दी थी तो काप्रेन वाले पोस्टमास्टर सा. ने कहा था कि आप खुद सक्षम हो किसी को रख लो तो उन्होंने मुझे रख लिया। दिनांक 4-12-91 के बाद हरिओम शर्मा ने कार्य किया था वह मेरे ताऊजी का लड़का है। मेरे पिताजी ने कहा था कि अब दूसरा आदमी काम करेगा । इससे यह साबित होता है कि राजमल पंचौली प्रार्थी श्रमिक अरविंद के पिता ने अपनी अस्वस्थता के कारण उसे अपने एवजी में अपने पद का कार्य करने के लिए शाखा डाकघर, जालौदा पर रख दिया तथा उसकी घरेलु परिस्थितियोंवश व अपनी अस्वस्था के कारण उन्होंने 4-12-91 को प्रार्थी अरविंद कुमार को उक्त पद के कार्य से हटाकर अपने भतीजे हरिओम शर्मा को इस पद पर लगा दिया और इस सम्बन्ध में स्वयं प्रार्थी अरविंद कुमार ने भी प्रदर्श एम.2 प्रार्थना-पत्र दिया कि वो उक्त पद पर उक्त तिथि उपरान्त कार्य करने में असमर्थ है । अत: उसका जिरह में यह कथन कि यह गलत है कि 4-12-91 के बाद उसने काम करने से मना कर दिया हो, मानने योग्य नही है तथा अप्रार्थी के द्वारा दिये गए तर्कों की पुष्टि प्रार्थी की स्वयं की साक्ष्य व दस्तावेजात से होती है । अत: जब प्रार्थी स्वयं ने 4-12-91 को कार्य करने में असमर्थता व्यक्त की और उसके पिता स्वयं ने ही अपनी एवज में उसे कार्य पर रखा था जिसे हटाकर अपने भतीजे हरिओम को रख दिया तो प्रार्थी अरविंद का यह कथन कि उसे अप्रार्थी द्वारा सेवा से हटा दिया गया, स्वीकार किये जाने योग्य नहीं है । इस प्रकार प्रथम तो प्रार्थी का यह सेवाकाल एवंजी के रूप में था व द्वितीय, प्रार्थी स्वयं ने अपनी इच्छा से यह सेवाकार्य छोड़ा है और उसके पिता ने ही उसे हटाकर अपने भतीजे को अपनी एवज में रखा है, अत: प्रार्थी को इस सेवाकाल का कोई लाभ प्राप्त नहीं हो सकता ।

12. प्रार्थी का आगे यह कथन भी रहा है कि उसने 13-5-92 से 3-7-92 तक निरन्तर कार्य किया है । इस सम्बन्ध में जिरह में उसने यह कहा है कि 13-5-92 को इन्सपैक्टर पोस्ट ओपिस, हेमराज जी राठौर द्वारा पुन: मुझे चार्ज दिया गया था । अप्रार्थी गवाह पूजाराम शर्मा ने अपने शपथ-पत्र में कहा है कि राजमल पंचोली, अति.वि. शाखा डाकपाल के बिना स्वीकृति 180 दिन से अधिक अवकाश पर रहने के फलस्वरूप आदेश दिनांकित 28-4-92 प्रदर्श एम 5 के जरिये उन्हें सेवा से निष्कासित कर दिया गया व डाकघर, बूंदी को उसकी प्रति भेजकर यह कहा गया कि किसी योग्य व्यक्ति को प्रोवीजनल रूप से लगा दिया जाये । इस पर डाकघर निरीक्षक, बूंदी द्वारा अपने अधिदर्शक कल्याणमल सैनी को जालौदा कार्यवाही बाबत भेजा गया । गवाह कल्याणमल सैनी ने अपने शपथ-पत्र में यह कहा है कि प्रार्थी अरविंद कुमार ने एक प्रार्थना-प्रत्र अधीक्षक डाकघर, को सम्बोधित करते हुए दिया था कि वह शाखा डाकघर, जालौदा के पद पर पूर्ण रूप से अस्थाई/प्रोवीजनल तौर पर कार्य करने के लिए तैयार है एवं विभाग जब भी उसे हटायेगा, वो स्वेच्छा से चार्ज देने में किसी प्रकार का काई एतराज नहीं करेगा तथा ना ही स्थायी नियुक्ति का दावा करेगा तथा अधीक्षक डाकघर, टोंक जिस व्यक्ति की नियुक्ति स्थाई तौर पर करेंगे उसे वो चार्ज देगा। जिसमें इस गवाह ने कहा कि कि शपथ पत्र में पैरा 3 से वर्णित पत्र दि. 13-5-92 को दिया था जो प्रदर्शएम 2 है, इस पर अस्थायी तौर पर प्रार्थी अरविंद कुमार की लिखित सहमति के आधार पर लगा दिया गया। इन्ही तथ्यों की पुष्टि गवाह पूजाराम शर्मा ने अपने बयानों में की है और कहा है कि दि. 13-5-92 को पुन: हरिओम शर्मा से चार्ज प्रार्थी अविंद कुमार को दिला दिया गया। पत्र प्रदर्श एम.2 दिनांकित 13-5-92 के अवलोकन से यह स्पष्ट है कि प्रार्थी श्रमिक अरविंद कुमार ने यह प्रार्थना-पत्र प्रस्तुत किया था कि वो टेम्पोरेरी/प्रोवीजनल इस पद पर कार्य करने को तैयार है और जब भी विभाग उसे हटायेगा वह स्वेच्छा से चार्ज देने में किसी प्रकार का कोई ऐतराज नहीं करेगा। विभाग द्वारा डाकघर में जिस किसी भी व्यक्ति की स्थायी बी. पी.एम. के पद पर नियुक्ति

होगी, वह उसे चार्ज सौंप देगा और इसी आधार पर हरिओम शर्मा से दि. 13-5-92 को प्रार्थी अरिवंद कुमार को चार्ज दिलवाया गया । अत: यह स्पष्ट है कि प्रार्थी श्रमिक अरविंद कुमार की नियुक्ति इस शर्त के साथ अस्थायी/प्रोवीजनल तौर पर हुई थी कि जब तक किसी की स्थायी नियुक्ति नहीं हो जाती तब तक वह इस पद पर कार्य करेगा। अप्रार्थी की साक्ष्य से यह साबित है कि उक्त पद पर स्थायी व नियमित नियुक्ति हेतु अधिसूचना जारी कर नियोजन कार्यालय से नाम मांगे गये जिस पर प्रार्थी श्रमिक अरविंद का नाम वहां से नहीं आया और प्रार्थी की नियुक्ति नहीं होकर हरिओम शर्मा जोकि उसका चचेरा भाई है, की नियुक्ति हुई जिसने कि पूर्व में भी इस पद पर कार्य किया था क्योंकि उसका नाम नियोजन कार्यालय से आ गया था। इस तरह से यह साबित होता है कि प्रार्थी श्रमिक ने अपनी सेवामुक्ति के पूर्व से दि. 13-5-92 से 3-7-92 तक लगभग 50 दिन ही कार्य किया है, अर्थात् 240 दिन पूर्ण कार्य नहीं किया है। प्रार्थी की ओर से यह तर्क दिया गया है कि नियोजन कार्यालय से नाम आना आवश्यक नहीं है और अपने कथन समर्थन में न्यायदृष्टांत एल.एल.आर. पृष्ठ 408-लेखराज एवं अन्य बनाम स्टेटआफ हरियाणा एवं अन्य, निर्णय दि. 5-9-89 मा. पंजाब एवं हरियाणा उच्चन्याय प्रस्तुत किया है। इसने याचीगण की पदोन्नति इस आधार पर निरस्त नहीं की गयी थी कि उनका नाम नियोजन कार्यालय से नहीं आया था, जिसे उचित नही माना गया। चूंकि हस्तगत मामला इस तरह का नहीं है, अत: यह न्याय दृष्टांत प्रार्थी श्रमिक को कोई सहायता नहीं पहुँचाता है। इस न्यायदृष्टांत में यह भी बताया गया है कि एम्पलोईमेन्ट एक्सचेन्ज एक्ट में ऐसा कोई प्रावधान नहीं है कि जिससे एम्पलोईमेन्ट एक्सचेन्ज एक्ट में ऐसा कोई प्रावधान नहीं है कि जिससे एम्पलोइमेन्ट एक्सचेन्ज से अभ्यर्थी का नाम जाना आवश्यक हो, जबदि बी.पी.एम.ई.डी. स्टाफ नियमों के अनुभाग-III में वर्णित ''मेथड आफ रिक्रूटमेन्ट'' के नियम (12) में वह यह गया है कि एम्पलोईमेन्ट एक्सचेन्ज से अभ्यर्थी का नाम आना आवश्यक है। इसी सम्बन्ध में विद्वान प्रतिनिधि प्रार्थी ने समाचार-पत्र की कटिंग भी प्रस्तुत की है, किन्तु इस समाचार-पत्र की कटिंग से उसके तथ्यों की जानकारी नहीं होती है और समाचार-पत्र के प्रकाशन के आधार पर न्यायाधिकरण कोई निष्कर्ष नहीं निकाल सकता है। प्रार्थी की ओर से एक अन्य न्यायदृष्टांत ''ए.टी.आर. 1988 सी.ए.टी. 84 स्वामीनाथ शर्मा एवं अन्य बनाम यूनियन आफ इण्डिया (सेन्ट्रल एडं ट्रिब्यूनल, नई दिल्ली'' प्रस्तुत किया गया है। इस मामले में याचीगण की 2-3 साल व उससे अधिक की सेवायें हो चुकी थी व कई याचीगण की आयु, सरकारी नौकरी में भरती की निर्धारित आयु सीमा से अधिक हो चुकी थी और इस मामले में सरकार के विरुद्ध "Promissory Estoppel" का मामला भी बनाया गया था, किन्तु हस्तगत मामले में इस तरह का मामला नहीं है, हस्तगत मामले में प्रार्थी अरविंद कुमार ने 2-3 साल या उससे अधिक की सेवा पूर्ण नहीं की है तथा सन् 91 में तो वह स्वयं ही सेवा करने में असमर्थ था और तदुपरान्त भी उसका 50 दिन का ही सेवाकाल हुआ है तथा उसने स्वयं ने अपने प्रार्थना-पत्र में यह शर्त स्वीकार की है कि नियमित नियुक्ति होने तक वह अस्थायी रूप से कार्य करता रहेगा और उसके पश्चात् कार्य से हट जायेगा। इस तरह के तथ्य उक्त न्यायदृष्टांत में नही है, अत: यह न्यायदृष्टांत भी प्रार्थी को कोई सहायता नहीं पहुँचाता है। बी. पी.एम./ईडी स्टाफ नियमों के अनुभाग-III के नियम 3 में वी. पी.एम. /ईटी पद हेतु योग्यता दे रही है एवं अन्य योग्यताओं के साथ-साथ यह भी आवश्यक है कि अभ्यर्थी स्थानीय निवासी हो, अचल सम्पत्ति धारक हो व जीवन-निर्वाह का अन्य साधन भी हो। किन्तु प्रार्थी श्रमिक ने यह साबित नहीं किया है कि उसके पास ये सभी योग्यताएं थी। इसके विपरीत प्रार्थी श्रमिक ने अपने क्लेम के पैरा 7 के अन्त में यह कहा है कि प्रार्थी पूर्णरूपेण बेरोजगार है और वह कहीं कार्य नहीं कर रहा है तथा उसने अपने शपथ-पत्र में भी इन्ही तथ्यों को दोहराया है।

13. अत: उक्त साक्ष्य के विवेचन से यह स्पष्ट है कि प्रार्थी श्रमिक अरविंद कुमार ने बी.पी.एम. व ई.डी.एम.सी. के पद की नियमित नियुक्ति हेतु कोई प्रार्थना-पत्र प्रस्तुत नहीं किया व उसने यह भी साबित नहीं किया है कि वो विभागीय नियमों में इस पद हेतु निर्धारित योग्यता रखता था, उसने अपनी सेवामुक्ति के पूर्व 240 दिन भी पूर्ण नहीं किये, ग्राम जालौदा डाकघर में एक ही पद था व उस पद पर पूर्व में कार्य कर चुके उसके चचेरे भाई हरिओम शर्मा जिसका कि नाम नियमानुसार नियोजन कार्यालय से प्राप्त हो गया था, की अप्रार्थी द्वारा नियुक्ति करने से कोई त्रुटि नहीं हुई। निष्कर्षत: प्रार्थी श्रमिक उक्त आधार पर किसी प्रकार का कोई अनुतोषप्राप्त करने का अधिकारी नहीं है।

14. दूसरे प्रार्थी भगवान प्रसाद ने अपने कलैम में यह कहा है कि वो 28-4-92 से 28-12-93 तक डाकपाल शाखा बोरखंडी के पद पर लगातार कार्यरत रहा है, उसे 28-12-93 को ही बिना अधिनियम की पालना किये अप्रार्थी द्वारा अवैध रुप से सेवा से पृथक कर दिया गया। अप्रार्थी का यह कहना है कि बोरखंडी में नया डाकघर खोला गया था और प्रार्थी भगवान प्रसाद को उसी प्रार्थना-पत्र के आधार पर प्रोवीजनल तौर पर अति. विभागीय शाखा डाकपाल के लिए लगाया गया था, चार्जरिर्पोट में भी प्रोवीजनल शब्द अंकित हैं, प्रार्थी की अस्थायी नियुक्ति थी जो समय-समय पर बढ़ाई गई थी, नियमित नियुक्ति हेतु नियोजन कार्यालय से नाम मांगा गया था जिसमें प्रार्थी का भी नाम आया था और उसे भी नियमित नियुक्ति हेतु मौका दिया गया था, किन्तु जो योग्यता नियमों में प्रावधित थी, उसके अनुसार प्रार्थी भगवान प्रसाद के नाम कोई अचल सम्पत्ति नहीं होने के कारण उसे नियमित नियुक्ति नहीं दी गयीं। इसके साथ-साथ उनका दूसरा तर्क यह है कि रेफ्रेन्स, प्रार्थी भगवानप्रसाद के 20-12-92 से सेवामुक्त किये जाने का प्राप्त हुआ है, जबकि प्रार्थी को 28-12-93 से सेवामुक्त किया गया है और प्रार्थी स्वंय ने भी यही कथन किया है। अत: रेप्रेन्स के बाहर जाकर न्यायाधिकरण,प्रार्थी की 28-12-93 से को गयी सेवामुक्ति की नहीं देख सकता। उनकी ओर से अपने कथन समर्थन में न्यायदृष्टांत ''2003 डब्ल्यू.एल.सी.(राज)यू.सी. 424-महावीर कण्डक्टर बनाम नन्दकिशोर'' को प्रस्तुत किया है।

15. शपथ-पत्र में प्रार्थी श्रमिक भगवान प्रसाद ने अपने क्लेम में वर्णित तथ्यों को ही दोहराया है। उसने अपनी जिरह में यह स्वीकार किया है कि 28-4-92 को उसे प्रोवीजनल नियुक्ति दी गयी थी। यह सही है कि नियमित नियुक्ति की जब प्रक्रिया चल रही थी तब तक के लिए 28-4-92 से 27-10-92 तक मुझे प्रोवीजनल नियुक्त किया था

। यह सही है कि नियोजन कार्यालय से 14 अभ्यर्थियों की सूची प्राप्त हुई थी जिनके पास अचल सम्पत्ति नहीं थी। यह सही है कि 26-3-93 की विज्ञप्ति के फलस्वरुप प्रार्थना-पत्र आमन्त्रित करने की तिथि 23-4-93 रखी गयी थी। यह सही है कि बाद में 7 आदमियों के नाम नियोजन कार्यालय के यहां से आये थे। यह सही है कि मेरे स्वयं के नाम अचल सम्पत्ति नहीं थी, मेरे पिताजी के नाम थी। यह सही है कि रमेंशचन्द्र शर्मा को 28-12-93 को कार्य सम्भला दिया गया था। अप्रार्थी गवाह पूजाराम ने अपने शपथ-पत्र में, जवाब में वर्णित तथ्यों को ही दोहराया है व दस्तावेजों को साबित किया है। उसने जिरह में प्रार्थी भगवान प्रसाद की प्रोवीजनल नियुक्ति होने का कथन किया है व यह भी कथन किया है कि प्रार्थी श्रमिक को इस कारण से हटाया गया था कि उसके नाम पर स्वयं के स्वामित्व की कोई अचल सम्पत्ति नहीं थी। प्रार्थी श्रमिक के द्वारा अचल सम्पत्ति बावत प्रदर्श डब्ल्यू.5 प्रस्तुत किया गया था जिसने प्रार्थी के पिता के नाम की सम्पत्ति का उल्लेख है। प्रार्थी के स्थान पर रमेशचन्द्र की नियुक्ति दी गयी थी, उसके पास अचल सम्पत्ति नियमानुसार रही थी।

16. पत्रावली के अवलोकन से यह स्पष्ट है कि प्रार्थी को नियमित नियुक्ति हेतु बुलाया गया था व उसे अचल सम्पत्ति के दस्तावेज प्रस्तुत करने को कहा था, किन्तु प्रार्थी अचल सम्पत्ति के दस्तावेज प्रस्तुत नहीं कर सका। विज्ञप्ति प्रदर्श एम 6 में स्पष्ट रूप से इस पद हेतु जो योग्यताएं मांगी हैं, उसमें अन्य योग्यताओं के साथ-साथ प्रार्थी के स्वयं के पास अचल सम्पत्ति होनी चाहिए थी और इस हेतु विभागीय नियम बने हुए है, उसके अनुभाग-III में भी इस तरह का प्रावधान है। इस सम्बन्ध में "यूनियन आफ इण्डिया एवं अन्य बनाम प्रेमचन्द एवं अन्य (सिविल रिट पिटि. नं. 15356/1997)" के मामले माननीय पंजाब एवं हरियाणा उच्च न्यायालय के माननीय न्यायाधिपति श्री जी.एस. सिंधवी ने अपने निर्णय दि. 23-3-98 में यह सम्प्रेक्षण किया है कि ईडीएसपीएम की नियुक्ति के लिए भारत सरकार ने जो सम्पत्ति की योग्यता निर्धारित की है वह योग्यता प्रार्थी द्वारा पूर्ण किये जाने की योग्यता का एक आवश्यक अंग है तथा भारत सरकार द्वारा निर्धारित सम्पत्ति की योग्यता प्रार्थी के लिए पूर्ण किया जाना आवश्यक है। चूँकि हस्तगत मामले में प्रार्थी भगवान प्रसाद ने अचल सम्पत्ति की योग्यता पूर्ण नहीं की है व उसने स्वयं ने यह स्वीकार किया है कि उसके पास कोई अचल सम्पत्ति नहीं थी, अत: अप्रार्थी ने चयन प्रक्रिया के उपरान्त प्रार्थी को नियुक्ति नहीं दी तो उसने कोई अवेधपूर्ण एवं अनियमित कार्य नहीं किया है।

17. इसके अतिरिक्त पत्रावली के अवलोकन से यह भी स्पष्ट है कि जो रेफ्रेन्स, न्यायाधिकरण को अधिनिर्णार्थ सम्प्रेषित किया गया है, उसमें न्यायाधिकरण को यह देखना है कि प्रार्थी भगवान प्रसाद की 20-12-92 से की गयी सेवामुक्ति अवैध है अथवा नहीं। जबकि प्रार्थी स्वयं ने अपने क्लेम व शपथ-पत्र में दि. 28-12-93 से सेवामुक्त होने का कथन दिया है। इस सम्बन्ध में अप्रार्थी की ओर से प्रस्तुत न्यायदृष्टांत "2003 डब्ल्यू.एल.सी. (राज.) यू. सी. 424-महावीर कण्डक्टर बनाम नन्दाकिशोर" के मामले है माननीय राज. उच्च न्यायालय द्वारा निम्न अभिमत प्रकट किया गया है:--

> "औद्योगिक विवाद अधिनियम, 1947 धारा 25-जे- पुन: स्थापन के स्थान पर प्रतिकर का अधिनिर्णय-निर्देश सेवाओं के पर्यवसान की तिथि का उल्लेख नहीं- श्रम न्यायालय कर्मकार के कथनानुसार पर्यवसान की तिथि को स्वीकार कर निर्देश की शर्तों में सुधार संशोधन या उपान्तरण करने हेतु सक्षम नहीं- अधिनिर्णय अधिकारिता बना रहा क्योंकि अधिकारिता पक्षकारों को सहमति से प्रदत्त नहीं हो सकती।"

18. अत: उक्त प्रकट किये गये अभिमत अनुसार यह न्यायाधिकरण भी राज्य सरकार द्वारा हस्तगत मामले में सम्प्रेषित रेफ्रेन्स है किसी प्रकार के संशोधन की अधिकारिता नहीं रखता है और रेफ्रेन्स के बाहर जाकर प्रार्थी द्वारा बतलायी गयी सेवामुक्ति की तिथि 28-12-93 के मामले को नहीं देख सकता है। निष्कर्षत: इस आधार पर भी प्रार्थी श्रमिक भगवान प्रसाद कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

परिणामत: भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा सम्प्रेषित रेफ्रेन्स को अधिनिर्णीत कर इस प्रकार उत्तरित किया जाता है कि प्रार्थी श्रमिक सर्वश्री अरविन्द कुमार शर्मा पुत्र श्री राजमल एवं प्रार्थी श्रमिक भगवान प्रसाद पुत्र श्री ग्यारसीलाल की अप्रार्थी नियोजक अधीक्षक, डाकघर टोंक डिविजन, टोंक, राजस्थान द्वारा सेवा से पृथक किया जाना अनुचित एवं अवैध नहीं है तथा दोनों प्रार्थीगण श्रमिक, उन्हें अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से किसी प्रकार का कोई अनुतोष प्राप्त करने के अधिकारी नहीं हैं।

के. के. गुप्ता, न्यायाधीश

नई दिल्ली, 17 नवम्बर, 2006

का.आ. 4775.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आल इंडिया रेडियो के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 35/2005 को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-11-06 को प्राप्त हुआ था।

[सं. एल-42012/56/92-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 17th November, 2006

S.O. 4775.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.35/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of All India Radio and their workman, which was received by the Central Government on 17-11-2006.

[No. L-42012/56/92-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE SHRI A.N. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. 35/2005

Date 08-11-2006

Shri Suryabhan Widoji Surjekar, R/o Near Chopade's Mill, Bajrang Nagar, Ajni, Nagpur.

Versus

The Station Director, All India Radio, Nagpur.

AWARD

The Central Government after satisfying the existence of disputes between Shri Surybhan W. Surjekar, Party No.1 and The Station Director, All India Radio, Nagpur, Party no. 2 referred the same for adjudication to this Tribunal vide its letter No. L- 42012/56/1992 -IR (DU) dt. 16-02-2005 under clause (d) of sub section (1) of Section 10 of ID Act with the following schedule.

> "Whether the action of the management of Station Director, All India Radio, Nagpur in terminating the services of Shri Suryabhan Widoji Surjekar w.e.f. 12-02-1980 is just and legal? If not, to what relief the workman is entitled?"

The perusal of the record, it appears that today the case was fixed for submitting Statement of Claim by the petitioner, Right from March, 2006 he was repeatedly told to submit or file the Statement of Claim. Today it was fixed for filing the Statement of Claim on behalf of the Petitioner. The Petitioner was present but he has not submitted his Statement of Claim. The counsel for the respondent was present who insisted for the dismissal of the reference because the petitioner has not filed any Statement of Claim and it is unnecessarily pending for it. According to him it should be dismissed for default of the petitioner Suryabhan W. Surjekar.

I have perused the record, the schedule of the reference indicates that the petitioner was terminated w.e.f. 12-02-1980. The dispute was raised some what in the year 1992. The adjudication was declined then there was a order of a Honorable High Court in W.P. 2358/1992 directing the government to refer the dispute for adjudication. The Ministry of Labour & Employment referred the dispute under its letter dt. 16-02-2005. It was received to this Court on 12-04-2005. Later on notice was issued on 03-08-2005 on 16-09-2005 both the parties were present but the petitioner has not filed any Statement of claim and from date till today it was adjourned on 8(eight) occasions for filing Statement of Claim by the petitioner. Infact he was expected to file Statement of Claim with in a fifteen days from the date of receipt of the letter from Ministry which was sent to him directly along with the letter to this Tribunal. Thus the act of termination challenged by the petitioner has taken place more than 26 years ago from today. Here before the Tribunal about one and half year is passed only for filing of the Statement of Claim. Today also the petitioner has not filed it though the sufficient chances were given to him. Advocate Shri Shukla has filed an application for restoration of the claim just after the order of dismissal has been passed. In fact he has not authority or Vakalatnama of the petitioner. The application is not signed even by the petitioner. Therefore there was no reason to act on this application. In such circumstances I do not think it proper to continue it for the same purpose. Hence it is dismissed for the default of the petitioner for not filing of the Statement of Claim. Thus the award.

A.N. YADAV, Presiding Officer

नई दिल्ली, 23 नवम्बर, 2006

का.आ. 4776.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 दिसम्बर, 2006 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय-5 और 6 धारा-76 की उपधारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं के उपबन्ध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्,

केन्द्र का नाम	राजस्व गांवो का क्षेत्र
कोबिलपट्टि परिधि के	1. एट्टयापुरम तालुक के **कडलैयूर** 2. काबिलपट्टि तालुक के **लिंगम्पट्टि** के अंतर्गत आने वाले राजस्व गाँव

[सं एस-38013/64/2006-एस एस-I]

एस. डी. जेवियर, अवर सचिव

New Delhi, the 23rd November, 2006

S.O. 4776.— In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st December, 2006 as the date on which the provisions of Chapter IV (except Section 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamilnadu namely :—

Centre	Area comprising the revenue villages of
Peripheral Areas of Kovilpatti	1. Kadalaiyur of Ettayapuram Taluk 2. Lingampatti of Kovilpatti Taluk

[No. S-38013/64/2006-S S-I]

S.D. XAVIER, Under Secy.

नई दिल्ली, 23 नवम्बर, 2006

का.आ. 4777.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 दिसम्बर, 2006 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 [44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय-5 और 6 धारा-76 की उपधारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध

तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:-

"तमिलनाडु राज्य के जिला तथा तालुक मदुरै में मुनिचाले परिधि के राजस्व ग्राम उरंगान्पट्टी, कलिमंगलम, वरिचियूर, नट्टारमंगलम और तुवरन्कुलम, सिवगंगै जिला के मानामदुरै, तालुक के पूवंती आदि क्षेत्रों के अन्तर्गत आने वाले राजस्व गाँव"।

[सं. एस-38013/65/2006-एस. एस.-I]

एस. डी. जेवियर, अवर सचिव

New Delhi, the 23rd November, 2006

S.O. 4777.— In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st December, 2006 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamilnadu namely :—

Centre	Area comprising the revenue villages of
Peripheral Areas of Munichalai	Uranganpatti, Kalimangalam Varichiyoor Nattarmangalam and Thuvarankulam of Madurai North Taluk, Madurai District. Poovanthi of Manamadurai Taluk of Sivagangai District.

[No. S-38013/65/2006-S S-I]

S. D. XAVIER, Under Secy.

नई दिल्ली, 23 नवम्बर, 2006

का.आ. 4778.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 दिसम्बर, 2006 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबन्ध **आन्ध्र प्रदेश** राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :-

(1) जग्गय्यापेट, गरिकपाडु, बलुसुपाडु, अन्नवरम् मुक्तेश्वरपुरम, रविराला, वेदाद्रि, जयंतिपुरम, के. अग्रहाराम, बुदवाडा, त्रिपुरवरम्, अनुमंचिपल्लि, शेर मोहम्मदपेट, राविकंपाडु, तिरूमलगिरि, तोर्रागुंटामालेम्, चिल्लकल्लु, रामचंद्रुनिपेट, जग्गय्यापेट मंडल, कृष्णा जिला ।

(2) कृष्णा जिले के वत्सवाई मंडल में मंगोल्लु, देचुपालेम्, गोपिनेनिपालेम्, वीरभद्रानिपालेम्, मक्कापेट, भीमवरम् ।

और

(3) नल्गोडा जिले के कोदाड मंडल में नल्लबंडागूडेम् ।

(4) नल्गोडा जिले के मेल्लचेरूउ मंडल में दोण्डपाडु ।

[सं. एस-38013/66/2006-एस एस-I]

एस. डी. जेवियर, अवर सचिव

New Delhi, the 23rd November, 2006

S.O. 4778.— In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st December, 2006 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

"All the areas falling within the revenue villages of jaggalahpet, Garikapadu, Balusupadu, Annavaram, Mukteswarapuram, Ravirala, Vedadri, Jayantipuram, K. Agraharam, Budawada, Tripuravaram, Anumanchipalli, Sher Mohammedpet Ravikampadu, Tirmalgiri, Torraguntapalem, Chillakallu, Ramachandrunipet in Jaggaiahpet mandal in Krishna District. Mangullu, Dechupalem, Gopinenipalem, Veeraphadrumpalem Makkapeta, Bhimavaram in Vatsavai Mandal in Krishna District.

AND

Nallabandagudem in Kodad Mandal in Nalgonda District. Dondapadu in Mellacheruvu Mandal in Nalgodna District."

[No. S-38013/66/2006-S S-I]

S. D. XAVIER, Under Secy.

नई दिल्ली, 23 नवम्बर, 2006

का.आ. 4779.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा **01 दिसम्बर, 2006** को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 (धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबन्ध **तमिलनाडु** राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:-

केन्द्र का नाम

तेन्कासी परिधि के साम्बवर वडकरै करिवलम वण्डनल्लूर के अंतर्गत आने वाले राजस्व गाँव

[सं. एस-38013/67/2006-एस एस-1]

एस. डी. जेवियर, अवर सचिव

New Delhi, the 23rd November, 2006

S.O. 4779.— In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st December, 2006 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamilnadu namely :—

Centre Name	Area comprising the revenue villages of
Tenkasi Peripheral	Sambavar Vadakarai Karivalam Vandanallur

[No. S-38013/67/2006-S S-I]

S. D. XAVIER, Under Secy.

नई दिल्ली, 10 नवम्बर, 2006

का.आ. 4780.—जबकि केन्द्र सरकार का विचार है कि यहां संलग्न अनुसूची में विनिर्दिष्ट राष्ट्रीय जूट विनिर्माता निगम लिमिटेड प्रबंधन और राष्ट्रीय जूट विनिर्माता निगम लिमिटेड श्रमिक संघ के बीच औद्योगिक विवाद मौजूद है ;

2. और जबकि केन्द्र सरकार ने उक्त संदर्भों पर विचार करने के उपरांत उक्त औद्योगिक विवाद को दिनांक 16-2-2005 और 6-6-2005 के आदेश द्वारा न्यायनिर्णयन हेतु राष्ट्रीय अधिकरण को संदर्भित करने से इनकार कर दिया था ।

3. और जबकि कलकत्ता उच्च न्यायालय के दिनांक 27-9-2006 के आदेश द्वारा रिट याचिका सं. 1438/2005 के मामले में इस मंत्रालय के दिनांक 6-6-2005 के आदेश को रद्द कर दिया और सरकार को निदेश दिया कि वह औद्योगिक विवाद को औद्योगिक विवाद अधिनियम, 1947 की धारा 7 ख के उपबंधों के अनुरूप याचिकाकर्ता संघ की प्रार्थना के आधार पर राष्ट्रीय औद्योगिक अधिकरण उच्च न्यायालय के पत्र की तिथि से छह सप्ताह की अवधि के भीतर संदर्भित करे ।

4. अतः अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7 (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा राष्ट्रीय औद्योगिक अधिकरण कोलकाता मुख्यालय के साथ स्थापित करती है और न्यायाधीश श्री सी. पी. मिश्रा को इसका पीठासीन अधिकारी नियुक्त करती है तथा उक्त अधिनियम की धारा 10 की उपधारा (1क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त विवाद को न्यायनिर्णयन हेतु राष्ट्रीय औद्योगिक अधिकरण को संदर्भित करती है । उक्त अधिकरण छः माह की अवधि के भीतर अपना पंचाट देगी ।

अनुसूची

"राष्ट्रीय जूट विनिर्माता लिमिटेड श्रमिक संघ के नैमित्तिक श्रमिकों/विशेष बदली और बदली श्रमिकों के स्थायित्व की मांगें; स्थायी श्रमिकों की तरह इन श्रमिकों पर अनुप्रयोजय नियम और शर्तें और न्यायोचित हैं या नहीं ? यदि हां, तो संबद्ध श्रमिक किन राहतों के पात्र हैं ?"

[सं. एल-51014/2/2005-आई आर (पीजी)]

अजय श्रीवास्तव, उप-निदेशक

New Delhi, the 10th November, 2006

S.O. 4780.— Whereas the Central Government is of the opinion that Industrial Dispute exists between the managment of National Jute Manufacturers Corporation Limited and National Jute Manufacturers Corporation Limited workers Association specified in the Schedule hereto annexed;

2. And wheras the Central Government after considering the said references had declined reference to a National Tribunal for adjudication of the said Industrial Dispute vide Order dated 16-2-2005 and 6-6-2005

3. And whereas the High Court at Calcutta vide order dated 27-9-2006 respect of Writ petition No. 1438 of 2005 set aside the impugned order of this Ministry dated 6-6-2005 and directed the Government to refer to industrial dispute to a National Industrial Tribunal on the basis of petitioner association's prayer strictly in accordance with the provisions of Section 7B of the Industrial Disputes Act, 1947 within a period of six weeks from the date of communication of Hon'ble High Court's Order.

4. Now therefore, in exercise of the powers conferred by Section 7(B) of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a National Industrial Tribunal with headquarters at Kolkata and appoints Justice Shri C. P. Mishra as its Presiding Officer and in exercise of the powers conferred by Sub-Section (1A) of Section 10 of the said Act, referes the said dispute to the National Industrial Tribunal for adjudication. The said Tribunal shall give its award within a period of six months.

SCHEDULE

"Whether the demands raised by the National Jute Manufacturers' Corporation Ltd. Workers' Association for permanency of the casual workers/special Budli and Budly workers; terms and conditions for such workers as applicable to the permanent workers; and service conditions as per service rules of M/s. NJMC Ltd. are justified ? If so, what relief the workers concerned are entitled to ?"

[No. L-51014/2/2005-IR (PG)]

AJAY SRIVASTAVA, Dy. Director

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